

ATTACHMENT 22

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Henning, Jeffry L.

August 26, 2013

1

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS		
ANTITRUST LITIGATION		MDL NO. 2002
		08-md-02002
<hr/>		
THIS DOCUMENT RELATES TO		
Kraft Foods Global, Inc., et al.		
v. United Egg Producers, Inc.,		HIGHLY
et al., No. 2:12-cv-00088-GP		CONFIDENTIAL

Monday, August 26, 2013

10:00 a.m.

Videotaped deposition of JEFFRY L. HENNING,
convened at the law offices of Bradshaw, Fowler, Proctor
& Fairgrave, P.C., 801 Grand Avenue, Des Moines, Iowa
50309, pursuant to subpoena, the proceedings being
recorded stenographically by Jonathan Wonnell, a
Registered Professional Court Reporter (NCRA #835577),
and transcribed under his direction.

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August 26, 2013

2 (Pages 2 to 5)

2	4
<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Direct Purchaser Plaintiffs:</p> <p>4 JOHN R. MALKINSON, ESQ.</p> <p>5 Malkinson & Halpern, P.C.</p> <p>6 208 S. La Salle Street, Suite 1750</p> <p>7 Chicago, Illinois 60604</p> <p>8 (312) 427-9600</p> <p>9 jmalkinson@mhtriallaw.com</p> <p>10</p> <p>11 On behalf of the Indirect Plaintiffs:</p> <p>12 MERRICK S. RAYLE, ESQ.</p> <p>13 Lovell Stewart Halebian Jacobson</p> <p>14 61 Broadway, Suite 501</p> <p>15 New York, New York 10006</p> <p>16 (212) 608-1900</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 CONTENTS</p> <p>2 WITNESS NAME PAGE</p> <p>3 JEFFRY LYNN HENNING</p> <p>4 By Mr. Greene: 8</p> <p>5 By Mr. Malkinson: 82</p> <p>6 By Mr. Rayle: 157</p> <p>7 By Mr. Malkinson: 189</p> <p>8 By Mr. Greene: 193</p> <p>9 By Mr. Malkinson 194</p> <p>10</p> <p>11 Afternoon Session 81</p> <p>12</p> <p>13 EXHIBITS</p> <p>14 NO. DESCRIPTION PAGE</p> <p>15 Exhibit 1 Case Management Order No. 10 11</p> <p>16 Exhibit 2 Supply Agreement dated December 22, 2003 23</p> <p>17 (MFI0300390 to MFI0300413)</p> <p>18 Exhibit 3 Assignment of Supply Agreement for 39</p> <p>19 Security Purposes dated March 1, 2004</p> <p>20 (MFI0300424-MFI0300428)</p> <p>21 Exhibit 4 Supply Agreement dated 9/3/04 41</p> <p>22 (MFI0028926-MFI0028956)</p> <p>Exhibit 5 Letter dated June 23, 2005 with attached 55</p> <p>Supply Agreement (MFI0298827-MFI0298851)</p>
3	5
<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of the Defendant Rose Acre Farms:</p> <p>4 KARRI ALLEN, ESQ. (via phone)</p> <p>5 Porter, Wright, Morris & Arthur LLP</p> <p>6 1919 Pennsylvania, N.W., Suite 500</p> <p>7 Washington, D.C. 20006-3434</p> <p>8 (202) 778-3050</p> <p>9 kallen@porterwright.com</p> <p>10</p> <p>11 On behalf of the Defendant Michael Foods:</p> <p>12 WILLIAM L. GREENE, ESQ.</p> <p>13 PETER J. SCHWINGLER, ESQ.</p> <p>14 Leonard, Street and Deinard</p> <p>15 150 South Fifth Street, Suite 2300</p> <p>16 Minneapolis, Minnesota 55402</p> <p>17 (612) 335-7023</p> <p>18 william.greene@leonard.com</p> <p>19 peter.schwingler@leonard.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 ART HOWARD, Videographer</p>	<p>1 EXHIBITS (Cont'd)</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 6 E-mail dated 9/5/07 67</p> <p>4 (MFI0045216-MFI0045217)</p> <p>5 Exhibit 7 United Voices dated 11/30/07 (MFI0056110 72</p> <p>6 - MFI0056118)</p> <p>7 Exhibit 8 Subpoena to Jeff Henning 83</p> <p>8 Exhibit 9 E-mail dated 1/7/08 with attached minutes 91</p> <p>9 dated 12/28/07 (MFI0297922 - MFI0297925)</p> <p>10 Exhibit 10 Letter dated 2/5/03 from Bob Sparboe 107</p> <p>11 (DAY0014411 - DAY0014414)</p> <p>12 Exhibit 11 E-mail chain (EGOE00529017 - 110</p> <p>13 EGOE00529019)</p> <p>14 Exhibit 12 Attendee List Chicago Marriott O'Hare 111</p> <p>15 Hotel 10/30/06 (UE0218113)</p> <p>16 Exhibit 13 Klippen Animal Welfare Guidelines 126</p> <p>17 Summary of Status 1/4/07 (MFI0037477 -</p> <p>18 MFI0037478)</p> <p>19 Exhibit 14 United Egg Producers Annual Board 128</p> <p>20 Meeting and Executive Conference Minutes</p> <p>21 dated October 12 & 13, 2000 (UE0296624 -</p> <p>22 UE0296627)</p> <p>Exhibit 15 E-mail dated 2/12/07 from Ken Klipped 136</p> <p>(MFI0064431, MFI0064432, MFI0064484)</p> <p>Exhibit 16 Egg Industry Center biography of Jeff 162</p> <p>Henning</p> <p>Exhibit 17 E-mail string Subject: Misrepresented 164</p> <p>and Misguided (MOARK0029479 -</p> <p>MOARK0029481)</p>

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Henning, Jeffry L.

August 26, 2013

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 EXHIBITS (Cont'd)</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 18 United Voices dated June 2, 2004 167</p> <p>4 (MOARK0006344 - MOARK0006353)</p> <p>5 Exhibit 19 Henning News March 2013 170</p> <p>6 Exhibit 20 E-mail string dated 4/12/07 Subject: 171</p> <p>7 Update VPC (MFI0035084 - MFI0035085)</p> <p>8 Exhibit 21 E-mail string Subject: USDA comments on 172</p> <p>9 Verified VPC (MFI0064621 - MFI0064662)</p> <p>10 Exhibit 22 UEP Marketing Committee Meeting Minutes 177</p> <p>11 dated 1/27/09 (MFI009964 - MFI0010002)</p> <p>12 Exhibit 23 Unresolved Animal Welfare Issues 179</p> <p>13 (BELL-D-0028597 - BELL-D-0028599)</p> <p>14 Exhibit 24 E-mail chain Subject: Chicago meeting 184</p> <p>15 (MFI0008369 - MFI0008371)</p> <p>16 Exhibit 25 UEP Annual Membership Meeting 10/16/08, 186</p> <p>17 MFI0021325 - MFI0021333)</p> <p>18 Exhibit 26 Memorandum dated January 11, 2003 191</p> <p>19 (MFI0052348 - MFI0052350)</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">8</p> <p>1 MS. ALLEN: This is Karri Allen from</p> <p>2 Porter, Wright, Morris & Arthur for Rose Acre</p> <p>3 Farms.</p> <p>4 MR. GREENE: Is there anyone else on the</p> <p>5 phone other than Ms. Allen?</p> <p>6 * * * * *</p> <p>7 Whereupon,</p> <p>8 JEFFRY LYNN HENNING,</p> <p>9 called as a Witness, having been duly</p> <p>10 sworn, was examined and testified as</p> <p>11 follows.</p> <p>12 * * * * *</p> <p>13 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>14 MICHAEL FOODS</p> <p>15 BY MR. GREENE:</p> <p>16 Q. Will you please state your name.</p> <p>17 A. Jeffry Lynn Henning.</p> <p>18 Q. What is your address?</p> <p>19 A. Business or personal?</p> <p>20 Q. Do both. Let's start with residential</p> <p>21 address.</p> <p>22 A. 794 West Elkham Circle, Unit Number</p>
<p style="text-align: right;">7</p> <p>1 PROCEEDINGS</p> <p>2 (9:03 a.m.)</p> <p>3 THE VIDEOGRAPHER: On the record. At</p> <p>4 this time, I'd please ask everyone to identify</p> <p>5 themselves starting from my left.</p> <p>6 MR. GREENE: All right. William L.</p> <p>7 Greene from the law firm of Leonard, Street &</p> <p>8 Deinard representing Michael Foods.</p> <p>9 MR. SCHWINGLER: Peter Schwingler from</p> <p>10 Leonard, Street & Deinard on behalf of Michael</p> <p>11 Foods.</p> <p>12 MR. RAYLE: Merrick Rayle, Lovell</p> <p>13 Stewart Halebian Jacobson, on behalf of the</p> <p>14 Indirect Plaintiffs.</p> <p>15 MR. MALKINSON: John Malkinson,</p> <p>16 Malkinson Halpern, for the Direct Purchaser</p> <p>17 Plaintiffs.</p> <p>18 MR. HENNING: Jeff Henning, Henning</p> <p>19 Holdings.</p> <p>20 MR. GREENE: And the people on the</p> <p>21 phone, could you please make -- counsel on the</p> <p>22 phone, please make appearances.</p>	<p style="text-align: right;">9</p> <p>1 2001, Marco Island, Florida 34145.</p> <p>2 Q. And your business address?</p> <p>3 A. Henning Construction Company, Passport,</p> <p>4 Henning Holdings, at 5800 Merle Hay Road, Johnston,</p> <p>5 Iowa 50131.</p> <p>6 Q. Mr. Henning, is it correct that you're</p> <p>7 not represented by counsel here today?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. You understand you have the</p> <p>10 opportunity to be represented by counsel?</p> <p>11 A. Yes.</p> <p>12 Q. And it's your choice to go forward</p> <p>13 without counsel; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Well, let me start by explaining the</p> <p>16 process a bit. This is a deposition in the case of</p> <p>17 In Re: Processed Egg Products Antitrust Litigation.</p> <p>18 You have been sworn. I want to make sure the</p> <p>19 order --</p> <p>20 MR. GREENE: The witness was sworn,</p> <p>21 correct?</p> <p>22 THE REPORTER: Yes.</p>

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Henning, Jeffry L.

August 26, 2013

4 (Pages 10 to 13)

<p style="text-align: right;">10</p> <p>1 BY MR. GREENE:</p> <p>2 Q. Okay. You've taken an oath today to</p> <p>3 testify -- to tell the truth. Do you understand</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. And this oath is the same oath you would</p> <p>7 be taking if you were testifying in court. Do you</p> <p>8 understand that?</p> <p>9 A. Yes.</p> <p>10 Q. So it's important that you testify</p> <p>11 truthfully and accurately. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 Q. I'm going to be asking you questions and</p> <p>14 the court reporter is going to be taking down the</p> <p>15 questions. You're going to be providing answers</p> <p>16 and the court reporter will be taking those down.</p> <p>17 So it's important that you give your answers out</p> <p>18 loud rather than a nod of the head. Do you</p> <p>19 understand that?</p> <p>20 A. Yes.</p> <p>21 Q. And it's also important that we don't</p> <p>22 talk over each other. I'll try and avoid</p>	<p style="text-align: right;">12</p> <p>1 A. I am.</p> <p>2 Q. All right. Are you willing to sign the</p> <p>3 acknowledgment and consent that appears on the</p> <p>4 final page of Exhibit 1?</p> <p>5 A. I am.</p> <p>6 Q. Okay. Would's you do so at this time,</p> <p>7 please.</p> <p>8 A. (Complies). Okay.</p> <p>9 Q. Thank you. So for the record, Henning</p> <p>10 Exhibit 1 is the protective order in the case, Case</p> <p>11 Management Order No. 10, with the signed</p> <p>12 acknowledgment and consent form on page 18 signed</p> <p>13 by Mr. Henning.</p> <p>14 Mr. Henning, I'd like to get some</p> <p>15 background information from you. Can you give us</p> <p>16 an overview of your educational background?</p> <p>17 A. I graduated from Iowa State University</p> <p>18 circa 1971 with an engineering operations degree.</p> <p>19 Prior to that, I was in Cal Community High School</p> <p>20 in north central Iowa in grade school. And I've</p> <p>21 had various continuing education courses of various</p> <p>22 natures in the various industries we're involved in</p>
<p style="text-align: right;">11</p> <p>1 interrupting you, and if you can wait for the end</p> <p>2 of my question before you start speaking. Is that</p> <p>3 okay?</p> <p>4 A. Yes.</p> <p>5 Q. Is there any reason that you can't give</p> <p>6 accurate and complete testimony this morning?</p> <p>7 A. Not to the best of my knowledge.</p> <p>8 Q. There is a protective order in this case</p> <p>9 that governs the confidentiality of information</p> <p>10 that has been produced in discovery and also</p> <p>11 deposition testimony. I'm going to have a copy of</p> <p>12 the protective order marked as Henning Exhibit 1.</p> <p>13 It's also referred to on the face of the document</p> <p>14 as Case Management Order No. 10.</p> <p>15 (Henning Exhibit 1 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. GREENE:</p> <p>18 Q. I'll ask you to review Henning</p> <p>19 Exhibit 1.</p> <p>20 A. (Reading). Okay.</p> <p>21 Q. Are you willing to comply with the terms</p> <p>22 of the protective order?</p>	<p style="text-align: right;">13</p> <p>1 since then.</p> <p>2 Q. What type of continuing education have</p> <p>3 you been involved with?</p> <p>4 A. I'm a member of the International Egg</p> <p>5 Commission, the United Egg Producers, et cetera.</p> <p>6 Also licensing requirements for various states for</p> <p>7 building construction licenses, et cetera.</p> <p>8 Q. And your degree from Iowa State, what</p> <p>9 exactly is the degree?</p> <p>10 A. Engineering operations.</p> <p>11 Q. Now let's talk about your work history.</p> <p>12 Can you give us an overview of your business or</p> <p>13 work history, maybe starting from the time you</p> <p>14 graduated college going forward?</p> <p>15 A. I was in Chicago for a short period of</p> <p>16 time. Then returned to Latimer, Iowa, where I went</p> <p>17 to work for Henning Construction Company, a family</p> <p>18 construction firm, in 1973. I purchased the assets</p> <p>19 of the company, Henning Construction Company, and</p> <p>20 Henning Sales Company.</p> <p>21 From there -- we mainly did construction</p> <p>22 in north central Iowa. Eventually in the rest of</p>

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Henning, Jeffrey L.

August 26, 2013

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 Iowa, eventually the states around Iowa and, as 2 time went by, 37 of the 50 states and 13, 14, 3 foreign countries. 4 Q. What is Henning Construction? 5 A. Henning Construction Company is a 6 general contractor involved in several segments and 7 industries, being hospitality, agriculture, 8 assisted living, commercial buildings, apartment 9 projects, several others. 10 Q. Okay. Well, as you know, this case 11 involves eggs and egg production. Does Henning 12 Construction have any involvement in egg 13 production-related businesses? 14 A. Henning Construction builds facilities 15 for various customers in the industry in both the 16 pullet-raising side, the production side and the 17 processing side. 18 Q. When you say you build facilities, is 19 Henning Construction essentially hired by a company 20 to build their facilities? 21 A. Yes. Sometimes design and build. 22 Q. How long has Henning Construction been</p>	<p style="text-align: right;">16</p> <p>1 either president or CEO? 2 A. I would say 2002. 3 Q. And since that time, chairman of the 4 board? 5 A. Yes. 6 Q. Now, apart from Henning Construction, do 7 you have an interest in any other businesses that 8 relate to egg production? 9 A. Yes. 10 Q. What kind of interest do you have? 11 A. I am a partner in -- founding partner in 12 Fremont Farms of Iowa, which is an egg production 13 business. Likewise, a partner in Center Fresh and 14 Hawkeye Pride Egg Farms, Sioux County Eggs. I'm 15 also a partner in Cedar Valley Egg Farm. I'm also 16 a partner in Zeilinger Egg Farm. Also a partner in 17 Meek's Egg Farm. Also a partner in Iowa Cage-free, 18 and also a partner in Trillium Farms. I believe 19 that's it. 20 Q. In each of these instances -- as to each 21 of these companies you just mentioned, do you have 22 an ownership interest?</p>
<p style="text-align: right;">15</p> <p>1 building egg production facilities? 2 A. I believe since 1964. 3 Q. And you said you started working with 4 the company in what year? 5 A. Underneath the table saws as a youngster 6 in probably '65 or '66 and ran some crews in the 7 various actual construction side of the business 8 and then post college and then back in the 9 management side of the business. 10 Q. What's your position at Henning 11 Construction today? 12 A. I am chairman of the board. 13 Q. How long have you had that position? 14 A. Since about 1975. 15 Q. Have you held any other positions since 16 1975 other than chairman of the board? 17 A. Yes. I was CEO and president. 18 Q. When were you CEO and president? 19 A. President probably since 1978 or so, and 20 CEO in the '80s and later turned the CEO job over 21 in 2002 to another individual. 22 Q. So when was the last time you were</p>	<p style="text-align: right;">17</p> <p>1 A. Yes. 2 Q. What is your ownership interest in 3 Fremont Farms of Iowa? 4 A. I am a founding partner and a 10 percent 5 owner. I served on the admin committee there for 6 oversight and management until about three years 7 ago when we disbanded that committee and the entire 8 partnership oversees the administrative functions. 9 Q. What is your ownership interest in 10 Center Fresh? 11 A. I am a -- again, an owner and I am 12 active in the negotiations relative to markets and 13 construction. 14 Q. What about Iowa Cage-free? 15 A. I am the founding partner. I'm the 16 largest stockholder by percentage in that 17 particular operation and, again, work with the 18 markets and the production. 19 Q. And what is your interest in Sioux 20 County Eggs? 21 A. As a partner in Center Fresh Group, we 22 purchased a significant interest in Sioux County</p>

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Henning, Jeffrey L.

August 26, 2013

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 Egg, and we market the products out of Sioux County</p> <p>2 Egg.</p> <p>3 Q. What is your interest in -- is it</p> <p>4 Trillium?</p> <p>5 A. Trillium. I am one of the four managing</p> <p>6 members of Trillium and an owner of Trillium in the</p> <p>7 Class A stock and, again, work with the marketplace</p> <p>8 in that particular organization.</p> <p>9 Q. My client is Michael Foods in this case.</p> <p>10 Does Henning Construction have any history of</p> <p>11 business relationship with Michael Foods?</p> <p>12 A. Yes.</p> <p>13 Q. What is that -- the history of that</p> <p>14 business relationship?</p> <p>15 A. In 1984, we were contacted to help a</p> <p>16 contractor who was having some difficulty in a</p> <p>17 project that they had in Colorado, and we became a</p> <p>18 builder for them in the Colorado projects and</p> <p>19 later, post 1984, we took over most entirely all of</p> <p>20 their production, construction, and a lot of their</p> <p>21 processing construction under Dan Gardner's</p> <p>22 tutelage, when it was my -- Milton G. Waldbaum</p>	<p style="text-align: right;">20</p> <p>1 And then we did some work for their</p> <p>2 Minnesota facilities. Whenever they would have</p> <p>3 disasters of some kind, we would go in and clean</p> <p>4 them up and get them back in production.</p> <p>5 Q. During what period was Henning</p> <p>6 Construction doing this construction for Michael</p> <p>7 Foods?</p> <p>8 A. From 1984 to today. We still do that</p> <p>9 work.</p> <p>10 Q. I want to talk to you about Fremont</p> <p>11 Farms of Iowa. You indicated that you were a</p> <p>12 founding partner of Fremont Farms of Iowa; is that</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. When was Fremont Farms of Iowa formed?</p> <p>16 A. Formative legal stages were probably 4Q</p> <p>17 '96 and '97.</p> <p>18 Q. Who were the original owners?</p> <p>19 A. I -- to the best of my recollection, the</p> <p>20 original partners in the formative stages were Bill</p> <p>21 Reed, Paul Garnett, Jim Dean, myself, and two other</p> <p>22 partners from Nebraska.</p>
<p style="text-align: right;">19</p> <p>1 Company. Post that, it was Michael's Foods. And</p> <p>2 so we build many buildings for MFI/Waldbaums.</p> <p>3 Q. Do you recall any -- withdrawn.</p> <p>4 Did you build any egg production</p> <p>5 facilities for Michael Foods?</p> <p>6 A. Yes. We did.</p> <p>7 Q. Do you recall any of the facilities that</p> <p>8 Henning Construction built for Michael Foods?</p> <p>9 A. Well, originally we built the Colorado</p> <p>10 complex. And I'm sorry I can't give you that name</p> <p>11 right now. Originally it was a Gates farm. I</p> <p>12 don't know what it's called at this point in time.</p> <p>13 Post that, we went to Wakefield and continued to</p> <p>14 build out of Big Red Farms.</p> <p>15 We also built all the pullet-growing</p> <p>16 facilities, Gardner Growers and all the various</p> <p>17 pullet-growing facilities to raise baby chickens to</p> <p>18 go into there.</p> <p>19 Post that, we went to northern Nebraska</p> <p>20 and built Blooming Egg Farm. And while we were</p> <p>21 building Blooming Egg Farm, we also built Husker</p> <p>22 Pride back in the Wakefield area.</p>	<p style="text-align: right;">21</p> <p>1 Q. And what were the circumstances that led</p> <p>2 to the formation of Fremont Farms of Iowa?</p> <p>3 A. As Michael Foods took over the Waldbaum</p> <p>4 companies, I had spent a lot of time with Michael's</p> <p>5 Foods in the design, construction and delivery of</p> <p>6 the buildings we built for them. And as the --</p> <p>7 Dr. Waldbaum was bought out and eventually Dan</p> <p>8 Gardner was bought out, there was a transition from</p> <p>9 wanting to build additional facilities in-house to</p> <p>10 wanting to expand production outside and use their</p> <p>11 in-house money, I assume, for markets and product</p> <p>12 development.</p> <p>13 We were approached -- I was approached,</p> <p>14 and said since you've built all these buildings and</p> <p>15 you understand who we are and what we are, would</p> <p>16 you have an interest in putting a group together to</p> <p>17 do production for us on a contract basis.</p> <p>18 Q. And who was it that approached you with</p> <p>19 that proposal?</p> <p>20 A. I would have to go around the room that</p> <p>21 was in the table that day, but I would think it was</p> <p>22 Dan Gardner and Don Paulson, primarily, which then</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 when it got to shipping from the management people</p> <p>2 that I had worked with and the construction people</p> <p>3 I had worked with, sliding over to the procurement</p> <p>4 side, it would have been Terry Baker.</p> <p>5 Q. When this original proposal was made,</p> <p>6 was there a particular project or projects that</p> <p>7 Michael Foods identified as wanting Fremont Farms</p> <p>8 of Iowa to build?</p> <p>9 A. Yes. The initial discussion was a 1.3</p> <p>10 to 2.7 million bird facility. The initial</p> <p>11 contract, as I recall, was for the 1.3 and let's</p> <p>12 crawl, walk, run. We didn't even get that done and</p> <p>13 we added the second piece of it, which were the</p> <p>14 second 1.35, which got us to 2.7. And post that,</p> <p>15 we added additional buildings in the third quadrant</p> <p>16 to eventually end up with about 5.2 million birds</p> <p>17 there -- for there.</p> <p>18 Q. I'm sorry. 5.2 million birds for --</p> <p>19 A. For Michael's.</p> <p>20 Q. Over what period of time?</p> <p>21 A. I would -- we, of course, began</p> <p>22 construction in '97, '98. I think it was about two</p>	<p style="text-align: right;">24</p> <p>1 A. It is our -- the contract with my</p> <p>2 initials on it for the Fremont Farms of Iowa</p> <p>3 facility.</p> <p>4 Q. And -- when you say your initials on it,</p> <p>5 on the first page, I see three sets of initials.</p> <p>6 There's one that is kind of moving from upper left</p> <p>7 to lower right. Which of the initials are yours?</p> <p>8 A. The top left is JLH. The second one is</p> <p>9 Terry Baker and the third one is Steve George.</p> <p>10 Q. So the top left is your initials?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And if we can go to the signature</p> <p>13 page on page 7.</p> <p>14 A. Yes.</p> <p>15 Q. Under Fremont Farms of Iowa, do you</p> <p>16 recognize the signature there?</p> <p>17 A. Yes.</p> <p>18 Q. Whose signature is that?</p> <p>19 A. JLH, partner, 12/22/03 and Steve George,</p> <p>20 president and CEO, same date.</p> <p>21 Q. Is the JLH your signature?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">23</p> <p>1 years to build phase one and phase two, which would</p> <p>2 have been the 1.35 times two, 2.7. And then --</p> <p>3 I'll get fuzzy with you right now on buildings. 21</p> <p>4 through 25. But my recollection would be that that</p> <p>5 was in the 2003 to '5 range.</p> <p>6 Q. Let me show you what I'm going to mark</p> <p>7 as Henning Exhibit 2. This is a supply agreement</p> <p>8 stamped -- or identified as confidential between</p> <p>9 M.G. Waldbaum Company, a Nebraska corporation,</p> <p>10 doing business as the Michael Foods Egg Products</p> <p>11 Company and Fremont Farms of Iowa, LLP. The date</p> <p>12 on the front page is December 22, 2003 and the</p> <p>13 Bates numbers are MFI0300390 to -413.</p> <p>14 (Henning Exhibit 2 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. GREENE:</p> <p>17 Q. Take a moment to look at Exhibit 2, if</p> <p>18 you would, Mr. Henning.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do you recognize Exhibit 2?</p> <p>21 A. Yes.</p> <p>22 Q. What is Exhibit 2?</p>	<p style="text-align: right;">25</p> <p>1 Q. Now, can you explain what the -- what</p> <p>2 this supply agreement, Exhibit 2, provides for?</p> <p>3 MR. MALKINSON: Objection, the document</p> <p>4 speaks for itself.</p> <p>5 BY MR. GREENE:</p> <p>6 Q. Can you provide a summary of the terms</p> <p>7 of the document?</p> <p>8 MR. MALKINSON: Same objection.</p> <p>9 A. It is the agreement between those -- MFI</p> <p>10 and ourselves regarding the terms, the payments,</p> <p>11 deliveries, the requirements under which we need to</p> <p>12 produce, insurance coverage, right of first refusal</p> <p>13 for expansion, risk of loss, confidentiality,</p> <p>14 biosecurity, force majeure, termination, notices,</p> <p>15 miscellaneous regarding other legal requirements</p> <p>16 between the two of us, a discussion about a</p> <p>17 look-back on total costs of ownership regarding</p> <p>18 transparency between the two companies to some</p> <p>19 extent relative to the costs of production.</p> <p>20 And do you want to go into the exhibits</p> <p>21 also?</p> <p>22 BY MR. GREENE:</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

8 (Pages 26 to 29)

<p style="text-align: right;">26</p> <p>1 Q. That's fine. I think that's sufficient</p> <p>2 for an overview. Is the format of this contract --</p> <p>3 leaving aside the particulars, is the format</p> <p>4 similar to other contracts between Fremont Farms</p> <p>5 and Michael Foods?</p> <p>6 MR. MALKINSON: Objection, lack of</p> <p>7 foundation.</p> <p>8 BY MR. GREENE:</p> <p>9 Q. Are you familiar with the other</p> <p>10 contracts between Fremont Farms of Iowa and Michael</p> <p>11 Foods?</p> <p>12 A. Yes.</p> <p>13 Q. Is the format of this contract similar</p> <p>14 to other contracts between Fremont Farms of Iowa</p> <p>15 and Michael Foods?</p> <p>16 A. Substantially, yes.</p> <p>17 Q. Now, underneath the first paragraph that</p> <p>18 refers to the agreement between M.G. Waldbaum</p> <p>19 Company doing business as Michael Foods Egg</p> <p>20 Products Company and Fremont Farms, there are two</p> <p>21 "whereas" clauses. Do you see that?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">28</p> <p>1 now that Fremont Farms of Iowa has separation</p> <p>2 capabilities that, at Michael's option, they could</p> <p>3 ask for separated products. It would have been not</p> <p>4 in this document.</p> <p>5 Q. That would still be unpasteurized</p> <p>6 liquid; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the -- the term is set forth in</p> <p>9 paragraph 1 on page 1; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And this is a term, if I'm</p> <p>12 reading it correctly, March 30th 2003 and continue</p> <p>13 until December 31, 2010; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. That's the initial term? So that's a --</p> <p>16 is that a term of seven years and nine months?</p> <p>17 A. Yes.</p> <p>18 Q. Let's take a look at the exhibit --</p> <p>19 page 8 of the document, which is -- the Bates</p> <p>20 number ends with 397. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. There's a quantity provision here, Roman</p>
<p style="text-align: right;">27</p> <p>1 Q. And the contract reads "Whereas Michael</p> <p>2 requires a reliable supply of shell eggs and raw</p> <p>3 liquid whole eggs, white and yolks, and whereas</p> <p>4 producer is willing to produce and sell shell eggs</p> <p>5 and/or liquid eggs on the terms and conditions set</p> <p>6 forth herein." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Specifically what is it that</p> <p>9 Fremont Farms of Iowa was to be selling Michael</p> <p>10 Foods?</p> <p>11 A. At this particular time, whole eggs.</p> <p>12 Whole liquid eggs.</p> <p>13 Q. When you say liquid eggs, what is it</p> <p>14 that Fremont Farms of Iowa would actually deliver</p> <p>15 to Michael Foods?</p> <p>16 A. Tankers of whole liquid egg.</p> <p>17 Q. Would those be pasteurized or</p> <p>18 unpasteurized?</p> <p>19 A. Unpasteurized.</p> <p>20 Q. Was that the case for all of the Fremont</p> <p>21 Farms contracts with Michael Foods?</p> <p>22 A. I believe that there may be an addendum</p>	<p style="text-align: right;">29</p> <p>1 numeral III, approximate pounds per year. Do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And that goes from 92,500,000</p> <p>5 pounds in 2003 to 142 million pounds in 2010. Do</p> <p>6 you see that table?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Where were the layers that were</p> <p>9 to produce that quantity of liquid egg for Michael</p> <p>10 Foods? Where were they located?</p> <p>11 A. At the Fremont Farms of Iowa complex in</p> <p>12 Malcolm, Iowa.</p> <p>13 Q. Now, when Fremont Farms of Iowa was</p> <p>14 formed, did it have any facilities?</p> <p>15 A. No.</p> <p>16 Q. No egg-production facilities?</p> <p>17 A. Correct.</p> <p>18 Q. You can see underneath the table it</p> <p>19 says, "It is agreed the existing producer layer</p> <p>20 houses of number 1 through number 25 (approximately</p> <p>21 4,380,000 layers) comprised the base volume through</p> <p>22 2004."</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

9 (Pages 30 to 33)

<p style="text-align: right;">30</p> <p>1 Can you explain what that means? What</p> <p>2 are producer layer houses 1 through 25?</p> <p>3 A. Envision, if you will, an H. Okay? The</p> <p>4 so center of the H, the cross leg that would be in</p> <p>5 the middle of the H is the breaking plant and</p> <p>6 cooling, refrigeration and delivery.</p> <p>7 The right-hand upper leg of the H would</p> <p>8 be ten buildings compromising 1,350,000 layers.</p> <p>9 The upper left-hand leg of the H would be</p> <p>10 identically opposite of that, so another 1,350,000</p> <p>11 birds, or 2.7.</p> <p>12 The balance buildings, 21 through 25,</p> <p>13 are of a different configuration. Instead of</p> <p>14 highrise buildings, they are battery cage</p> <p>15 buildings, and so they're wider and they have more</p> <p>16 hens in them. And that comprises the balance</p> <p>17 between the 2.7 and the 4.380.</p> <p>18 Q. As of December 2003, had Fremont Farms</p> <p>19 of Iowa already built housing for 4,380,000 layers?</p> <p>20 A. Yes.</p> <p>21 Q. And this was all built between the time</p> <p>22 Fremont Farms of Iowa --</p>	<p style="text-align: right;">32</p> <p>1 A. From 1997 through 2004.</p> <p>2 Q. Now, the next sentence reads "The</p> <p>3 additional output (approximately 820,000 layers)</p> <p>4 included in the 2005 and forward volume is subject</p> <p>5 to the construction of those facilities."</p> <p>6 This is now discussing another 820,000</p> <p>7 layers; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. And is this 820,000 layers then in</p> <p>10 addition to the 4,380,000 layers that are already</p> <p>11 under construction at this point?</p> <p>12 A. Correct.</p> <p>13 Q. And is that additional 820,000 layers</p> <p>14 the subject of this supply agreement, Exhibit 2?</p> <p>15 MR. MALKINSON: Objection. The document</p> <p>16 speaks for itself.</p> <p>17 A. Yes. This Exhibit A outlines our</p> <p>18 obligation through that process.</p> <p>19 Q. Now, were you involved in decisions</p> <p>20 by -- withdrawn.</p> <p>21 Were facilities for those additional</p> <p>22 820,000 layers ultimately constructed?</p>
<p style="text-align: right;">31</p> <p>1 A. Excuse me, sir.</p> <p>2 Q. Yeah.</p> <p>3 A. I apologize. We were under</p> <p>4 construction. We weren't fully populated.</p> <p>5 Q. Okay.</p> <p>6 A. That's why you will read that it says</p> <p>7 compromises [sic] the base volume through 2004, but</p> <p>8 not 2003.</p> <p>9 Q. So construction -- withdrawn.</p> <p>10 Once the construction that was then</p> <p>11 underway was completed, you would be at 4,380,000</p> <p>12 layers; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And all of that construction occurred</p> <p>15 after Fremont Farms of Iowa was formed; is that</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. All construction between the late '90s</p> <p>19 and December of 2003; is that right?</p> <p>20 MR. MALKINSON: Objection, leading.</p> <p>21 BY MR. GREENE:</p> <p>22 Q. When did all of that construction occur?</p>	<p style="text-align: right;">33</p> <p>1 A. Yes.</p> <p>2 Q. At the same location as the rest of the</p> <p>3 layers?</p> <p>4 A. Yes. Quad 3 of Fremont Farms of Iowa.</p> <p>5 Q. And where physically is this site</p> <p>6 located?</p> <p>7 A. Malcolm, Iowa.</p> <p>8 Q. Were you involved in decisions by</p> <p>9 Fremont Farms of Iowa about whether to build new</p> <p>10 facilities to house layers?</p> <p>11 A. Yes.</p> <p>12 Q. You personally?</p> <p>13 A. Yes.</p> <p>14 Q. How did Fremont Farms of Iowa decide</p> <p>15 when to build facilities and how much capacity to</p> <p>16 build?</p> <p>17 A. Through our dialogues with the</p> <p>18 marketplace, in this case, Michael Foods --</p> <p>19 Waldbaums and Michael Foods -- there would be a</p> <p>20 discussion as to their future needs on a regular</p> <p>21 basis so that we would have time to produce and</p> <p>22 build facilities for them to meet their future</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 needs. And they would let us know what they were.</p> <p>2 We would require a contract in order to</p> <p>3 obtain investors and the appropriate Farm Credit</p> <p>4 Services of America financing to build them. And</p> <p>5 if we couldn't get that, we wouldn't. So it took a</p> <p>6 contract, then it took the financing and investors,</p> <p>7 and then the project would move forward.</p> <p>8 Q. You say it took a contract -- am I</p> <p>9 understanding correctly, you required a contract in</p> <p>10 order to go forward with building facilities?</p> <p>11 A. Yes.</p> <p>12 Q. What kind of contract?</p> <p>13 A. A grain-based -- confidentially, of</p> <p>14 course, a grain-based, market-based -- I'm sorry, a</p> <p>15 grain-based cost-plus contract of an adequate</p> <p>16 length to satisfy both the investors' needs and the</p> <p>17 Farm Credit Services of America's needs to fund our</p> <p>18 project so we could build them and deliver the</p> <p>19 product.</p> <p>20 Q. And when you say a term of sufficient</p> <p>21 length, how long a contract were you looking for?</p> <p>22 A. At this point in time, seven years. In</p>	<p style="text-align: right;">36</p> <p>1 pro forma needs, which generally required a</p> <p>2 percentage return to the investors and a financing</p> <p>3 term such that we weren't having a lot of exposure</p> <p>4 at the end of the contract period.</p> <p>5 BY MR. GREENE</p> <p>6 Q. And during this period of time -- let's</p> <p>7 say it's seven years -- would Michael Foods then be</p> <p>8 obligated to purchase the output from the</p> <p>9 facilities you'd be building?</p> <p>10 MR. MALKINSON: Objection, the contract</p> <p>11 speaks for itself. I don't know what -- you've</p> <p>12 said there's several contracts. I don't know</p> <p>13 whether you're talking about the one you've just</p> <p>14 gone through or some other one.</p> <p>15 BY MR. GREENE:</p> <p>16 Q. Under Henning Exhibit 2 -- take a look</p> <p>17 at Henning Exhibit 2.</p> <p>18 A. Yes, sir.</p> <p>19 Q. This is the contract, as I understand</p> <p>20 it, where Fremont Farms agreed to construct</p> <p>21 facilities for an additional 820,000 layers; is</p> <p>22 that correct?</p>
<p style="text-align: right;">35</p> <p>1 today's world, 12 to 14.</p> <p>2 Q. And under the seven-year contract -- a</p> <p>3 contract of, let's say, for example, seven years --</p> <p>4 what would Michael Foods' obligations be under that</p> <p>5 contract?</p> <p>6 MR. MALKINSON: Object to form.</p> <p>7 BY MR. GREENE</p> <p>8 Q. When one of the counsel makes an</p> <p>9 objection, that's for the record, but you can go</p> <p>10 ahead and answer the question.</p> <p>11 A. If I understand the question --</p> <p>12 Q. Well, let me withdraw it.</p> <p>13 A. Thank you. Sorry.</p> <p>14 Q. If he's objected to it and you've</p> <p>15 indicated you're not clear on the understanding,</p> <p>16 it's probably one I should withdraw.</p> <p>17 What kind of a commitment were you</p> <p>18 looking for from Michael Foods as a prerequisite to</p> <p>19 building new facilities?</p> <p>20 MR. MALKINSON: Objection, vague. No</p> <p>21 time frame.</p> <p>22 A. We looked for a contract that met our</p>	<p style="text-align: right;">37</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Was it your understanding, then,</p> <p>3 that Michael Foods was obligated to purchase the</p> <p>4 output from those 820,000 layers for the term of</p> <p>5 the contract?</p> <p>6 A. Yes.</p> <p>7 MR. MALKINSON: Objection, the contract</p> <p>8 speaks for itself.</p> <p>9 BY MR. GREENE:</p> <p>10 Q. Why was that important to Fremont Farms</p> <p>11 of Iowa that Michael Foods make that commitment?</p> <p>12 A. Because Farm Credit Services of America</p> <p>13 would not extend us the credit to be able to</p> <p>14 finance these facilities and build them without</p> <p>15 that commitment.</p> <p>16 Q. And by "that commitment," you mean the</p> <p>17 long-term purchase commitment?</p> <p>18 A. That's correct.</p> <p>19 Q. From the time Fremont Farms of Iowa was</p> <p>20 formed until the end of 2008, did Fremont Farms of</p> <p>21 Iowa ever build new facilities without first having</p> <p>22 a long-term commitment from Michael Foods to</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

11 (Pages 38 to 41)

<p style="text-align: right;">38</p> <p>1 purchase production from the new facilities?</p> <p>2 A. No.</p> <p>3 Q. Who was the buyer of the output --</p> <p>4 again, withdrawn.</p> <p>5 From the formation of Fremont Farms of</p> <p>6 Iowa until the end of 2008, who was the buyer of</p> <p>7 the liquid eggs produced by Fremont Farms of Iowa?</p> <p>8 A. Michael's Foods.</p> <p>9 Q. Were there any other buyers during that</p> <p>10 period?</p> <p>11 A. No.</p> <p>12 Q. In total, between the time of Fremont</p> <p>13 Farms of Iowa's formation in 2008, how much</p> <p>14 capacity did Fremont Farms of Iowa build as a</p> <p>15 result of long-term contracts with Michael Foods?</p> <p>16 A. 5.2 million birds.</p> <p>17 Q. I'll ask the court reporter to mark</p> <p>18 Henning Exhibit 3. This is a Assignment of Supply</p> <p>19 Agreement for Security Purposes. It reads on the</p> <p>20 top "This assignment is made effective the first</p> <p>21 day of March 2004 by Fremont Farms of Iowa, LLP,</p> <p>22 an Iowa limited liability partnership (Borrower) to</p>	<p style="text-align: right;">40</p> <p>1 and the Farm Credit financing for total, yes.</p> <p>2 Q. The debt financing?</p> <p>3 A. Yes.</p> <p>4 Q. And on page 2, there's a line that says,</p> <p>5 "Fremont Farms of Iowa, LLP by Jeff Henning,</p> <p>6 manager." Do you see that line?</p> <p>7 A. Yes.</p> <p>8 Q. And is that your signature?</p> <p>9 A. Yes.</p> <p>10 Q. What was your understanding of the --</p> <p>11 oh. Let's just turn the page a couple pages to the</p> <p>12 page that ends Bates number 427. This is an</p> <p>13 acceptance of notice of assignment. It appears to</p> <p>14 be signed by Terry Baker. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And then the final page is the first</p> <p>17 page of the supply agreement that we previously</p> <p>18 marked as Exhibit 2; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. What was your understanding</p> <p>21 of the purposes of this assignment document?</p> <p>22 A. It was further collateral assurance to</p>
<p style="text-align: right;">39</p> <p>1 and for the benefit of Farm Credit Services of</p> <p>2 America, FLCA, and Farm Credit Services of America</p> <p>3 PCA (Lender) Bates numbers MFI0300424 through -28.</p> <p>4 (Henning Exhibit 3 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. GREENE:</p> <p>7 Q. Do you recognize Henning Exhibit 3?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. That is an assignment required by Farm</p> <p>11 Credit Services of America of our supply agreement</p> <p>12 with Michael Foods so that it would help secure the</p> <p>13 financing that we needed to expand the projects.</p> <p>14 Q. And was Farm Credit Services of</p> <p>15 America -- I'm sorry, Farm Credit Services of</p> <p>16 America, were they the lender for Fremont Farms of</p> <p>17 Iowa?</p> <p>18 A. Yes.</p> <p>19 Q. Farm Credit Service of America provided</p> <p>20 the financing for the construction of the</p> <p>21 facilities you've been testifying about?</p> <p>22 A. Yes, subject to the investor financing</p>	<p style="text-align: right;">41</p> <p>1 the lender that should something happen to the</p> <p>2 operators, i.e., Fremont Farms of Iowa, that they</p> <p>3 would have the ability to come in, produce the egg</p> <p>4 and execute on getting paid off on their financing.</p> <p>5 Q. When you say to get paid off, you mean</p> <p>6 under the supply agreement with Michael Foods?</p> <p>7 A. Correct. They would continue to supply</p> <p>8 product and hopefully produce profits to pay off</p> <p>9 their loan.</p> <p>10 Q. Do you believe that Fremont Farms of</p> <p>11 Iowa could have obtained financing for these</p> <p>12 construction projects without the Michael Foods</p> <p>13 supply agreements?</p> <p>14 A. No. We could not have.</p> <p>15 Q. Let me ask you now about Center Fresh.</p> <p>16 When did you first become a part owner of Center</p> <p>17 Fresh?</p> <p>18 A. Oh, my goodness. I believe 2005.</p> <p>19 Q. Let me show you some documents. Maybe</p> <p>20 it will help.</p> <p>21 (Henning Exhibit 4 was marked for</p> <p>22 identification.)</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 BY MR. GREENE:</p> <p>2 Q. I'm going to mark as Henning Exhibit 4 a</p> <p>3 supply agreement. "Confidential. This agreement</p> <p>4 made and entered into as of this 3rd day of</p> <p>5 September 2004 by and between M.G. Waldbaum</p> <p>6 Company, a Nebraska corporation, d/b/a the Michael</p> <p>7 Foods Eggs Products Company, and Center Fresh Egg</p> <p>8 Farm, LLP, an Iowa limited liability partnership."</p> <p>9 The Bates numbers on this document are MFI0028926</p> <p>10 through -956.</p> <p>11 Do you see that -- do you see Henning</p> <p>12 Exhibit 4?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recognize the document?</p> <p>15 A. Yes.</p> <p>16 Q. What is Henning Exhibit 4?</p> <p>17 A. It is the marketing supply agreement</p> <p>18 between Michael Foods and Center Fresh Egg Farm,</p> <p>19 LLP.</p> <p>20 Q. All right. And I want to direct your</p> <p>21 attention to the third to the last page of the</p> <p>22 exhibit, the one that ends with Bates number 954.</p>	<p style="text-align: right;">44</p> <p>1 Q. So before -- you said probably mid-2004.</p> <p>2 Before mid-2004, you were not a part owner of</p> <p>3 Center Fresh?</p> <p>4 A. That is correct.</p> <p>5 Q. And what's your understanding of what</p> <p>6 Center Fresh's business was before you became a</p> <p>7 part owner?</p> <p>8 A. With my Henning Construction Company hat</p> <p>9 on, there were two sets of facilities there. There</p> <p>10 were two buildings called the Dooyema & Sons</p> <p>11 buildings on this document.</p> <p>12 Q. And "this document" you're referring to</p> <p>13 what?</p> <p>14 A. This exhibit that you showed me.</p> <p>15 Henning 4.</p> <p>16 Q. Okay. Henning 4. And are you pointing</p> <p>17 to a part of --</p> <p>18 A. Dooyema -- yes, on page 954.</p> <p>19 Q. Okay.</p> <p>20 A. The bottom half. It says Dooyema &</p> <p>21 Sons, layers, 160,000. We had built one of those</p> <p>22 buildings. The Dooyemas had built one of those</p>
<p style="text-align: right;">43</p> <p>1 A. Yes, sir.</p> <p>2 Q. And you see some quantity tables and the</p> <p>3 second half of the page says "Phase 1, Existing</p> <p>4 Houses, New Facilities. Phase 2, New Facilities."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Does this, Henning Exhibit 4,</p> <p>8 refresh your recollection about when you became a</p> <p>9 part owner of Center Fresh?</p> <p>10 A. Yes.</p> <p>11 Q. When did you become a part owner of</p> <p>12 Center Fresh?</p> <p>13 A. In probably mid-2004.</p> <p>14 Q. And what were the circumstances under</p> <p>15 which you became a part owner of Center Fresh?</p> <p>16 A. Jim Dean wished to expand Center Fresh</p> <p>17 Farms. The existing owner group -- part of the</p> <p>18 existing owner group decided to exit at that point</p> <p>19 in time. And Jim asked me if I would become an</p> <p>20 investor, work with him with Michael Foods on the</p> <p>21 expansion contract and participate in some of the</p> <p>22 construction activities.</p>	<p style="text-align: right;">45</p> <p>1 about 15 years before themselves. So we, as a</p> <p>2 builder, had built for the Dooyema family who owned</p> <p>3 the ground where Center Fresh eventually expanded.</p> <p>4 And the Dooyema family is about a 20 percent</p> <p>5 partner in that business. So that's what they had,</p> <p>6 and those were sold as shell eggs into the market.</p> <p>7 Jim came in and expanded and the first</p> <p>8 investor group came in and expanded the additional</p> <p>9 780,000 layers that were there, but there were only</p> <p>10 four buildings. So there were two buildings that</p> <p>11 were added, and we built those last two buildings</p> <p>12 for them as a contractor and they were built for</p> <p>13 Michael's Foods. The upstream market at that point</p> <p>14 in time was Michael Foods.</p> <p>15 Q. When you say Jim, you refer to --</p> <p>16 A. Jim Dean, the CEO.</p> <p>17 Q. Okay. Jim Dean was the CEO of Center</p> <p>18 Fresh?</p> <p>19 A. Yes.</p> <p>20 Q. So by the time that you became a part</p> <p>21 owner of Center Fresh, the 940,000 layers that are</p> <p>22 indicated in the existing houses line on the</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 document that ends 954, those already existed; is 2 that correct?</p> <p>3 A. Correct.</p> <p>4 Q. The rest of the facilities, the ones 5 that are indicated under new facilities, did those 6 exist at the time you became a part owner?</p> <p>7 A. They did not.</p> <p>8 Q. Let's talk about the -- first the 9 existing houses. I think you mentioned that two of 10 the buildings were built for Michael Foods. What 11 do you mean by that?</p> <p>12 A. Jim recognized via his participation in 13 the original Fremont Farms of Iowa model that the 14 future of the business at that point in time was to 15 find grain-based markets of which Michael's was a 16 major one. And they -- he entered into a 17 discussion with them to add two more buildings' 18 production to that -- what was there at that point 19 in time. And the original investor group 20 participated in that process.</p> <p>21 And so those two buildings were new, as 22 well as the conversion of the others to Michael's</p>	<p style="text-align: right;">48</p> <p>1 in here about the 270,000, that's referring to the 2 line that says existing houses, layers, 780,000?</p> <p>3 A. Correct.</p> <p>4 Q. All right. Now, with those 940,000 5 layers already on the ground, you then become a 6 part owner of Center Fresh; is that right?</p> <p>7 A. Correct.</p> <p>8 Q. All right. And, by the way, where again 9 geographically is this site located?</p> <p>10 A. Northwest Iowa, Sioux Center, Iowa.</p> <p>11 Q. And were you involved in the negotiation 12 of Henning Exhibit 4, the September 2004 contract 13 between Michael Foods and Center Fresh?</p> <p>14 A. Yes. Because as a partner, that was one 15 of the things I brought to the table was 16 participation in that process.</p> <p>17 Q. That was one of your responsibilities?</p> <p>18 A. Correct.</p> <p>19 Q. Were you also involved in Center Fresh's 20 decision to build new facilities?</p> <p>21 A. Yes.</p> <p>22 Q. And looking at Exhibit 4 under the term,</p>
<p style="text-align: right;">47</p> <p>1 at that point in time.</p> <p>2 Q. The new buildings that were built for 3 Michael's, how many layers were in those buildings?</p> <p>4 A. 380,000.</p> <p>5 Q. No. I'm sorry. Withdraw the question. 6 I'm referring now to the line that says 7 existing houses, 780,000 layers. Okay?</p> <p>8 A. There were two 135,000 bird houses added 9 for Waldbaum's --</p> <p>10 Q. Okay.</p> <p>11 A. -- as new construction.</p> <p>12 Q. Two 135,000 buildings?</p> <p>13 A. Yes.</p> <p>14 Q. For a total of --</p> <p>15 A. 270.</p> <p>16 Q. -- 270,000 in new construction for 17 Michael Foods?</p> <p>18 A. Correct.</p> <p>19 MR. MALKINSON: Just so I'm clear, 20 that's the existing? That's part of the existing?</p> <p>21 BY MR. GREENE:</p> <p>22 Q. Mr. Malkinson is asking, your testimony</p>	<p style="text-align: right;">49</p> <p>1 the term of this contract, it's actually got two 2 phases, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And phase one had a term of January 1, 5 2005 until December 31, 2010; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. That's a six-year term?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then there's a phase two that 10 goes from January 1, 2006 until December 31, 2011, 11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And that's also a six-year term?</p> <p>14 A. Yes. If I might add, with an evergreen 15 provision.</p> <p>16 Q. And what does an evergreen provision 17 mean?</p> <p>18 A. It means that this agreement will 19 continue unless one party or the other notifies the 20 other party at a date certain before the 21 termination of the contract.</p> <p>22 Q. So it's at least six years?</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 A. Correct.</p> <p>2 Q. Now, let's go back to that third to last</p> <p>3 page of Exhibit 4, the one that ends 954.</p> <p>4 A. Yes.</p> <p>5 Q. Did Center Fresh agree to build</p> <p>6 additional facilities under Exhibit 4?</p> <p>7 A. Yes.</p> <p>8 Q. How much additional housing did Center</p> <p>9 Fresh agree to build under Exhibit 4?</p> <p>10 A. Approximately 2.8-plus million birds.</p> <p>11 Q. And how did Center Fresh make the</p> <p>12 decision on whether to go ahead and build the</p> <p>13 housing for the additional 2.8 million birds?</p> <p>14 A. Upon Michael's request for X amount of</p> <p>15 product back into the number of hens it takes, back</p> <p>16 into the length of the contract you need, back into</p> <p>17 the investors' amount of money to put in, back into</p> <p>18 the Farm Credit Service financing, and assignments,</p> <p>19 et cetera, it all ties together, and away we go.</p> <p>20 Q. What was the significance of Michael</p> <p>21 Foods' willingness to enter into this supply</p> <p>22 contract, Exhibit 4, in Center Fresh's decision to</p>	<p style="text-align: right;">52</p> <p>1 Q. And, again, would that be pasteurized or</p> <p>2 unpasteurized?</p> <p>3 A. Unpasteurized.</p> <p>4 Q. And how were those delivered to Michael</p> <p>5 Foods?</p> <p>6 A. In tankers.</p> <p>7 Q. You mentioned the 270,000 birds that</p> <p>8 were -- withdrawn.</p> <p>9 You mentioned the housing for 270,000</p> <p>10 birds that was part of the existing houses at the</p> <p>11 time you became a part owner. Do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. And you've just testified about the</p> <p>14 2.8 million -- you just testified about the housing</p> <p>15 for the additional 2.8 million layers, correct?</p> <p>16 A. Yes.</p> <p>17 Q. In total, how much capacity -- how much</p> <p>18 additional housing did Center Fresh build as a</p> <p>19 result of long-term contracts with Michael Foods?</p> <p>20 A. To my knowledge, approximately</p> <p>21 3.1 million.</p> <p>22 Q. Without Michael Foods' long-term</p>
<p style="text-align: right;">51</p> <p>1 build these facilities?</p> <p>2 A. It would not have happened without it.</p> <p>3 Q. And do you believe you would have been</p> <p>4 able to -- withdrawn.</p> <p>5 Do you believe that Center Fresh would</p> <p>6 have been able to obtain financing to build housing</p> <p>7 for an additional 2.8 million birds without the</p> <p>8 Michael Foods supply contract?</p> <p>9 A. I do not believe they would have.</p> <p>10 Q. Were the facilities for these additional</p> <p>11 2.8 million layers, in fact, built?</p> <p>12 A. Yes.</p> <p>13 Q. And they currently exist today in -- is</p> <p>14 it Sioux Center, Iowa?</p> <p>15 A. Yes.</p> <p>16 Q. What form -- withdrawn.</p> <p>17 What was the specific product that</p> <p>18 Center Fresh delivered to Michael Foods?</p> <p>19 A. Liquid eggs. However, the initial</p> <p>20 phases were -- let me restate this.</p> <p>21 Liquid egg products, liquid whole egg</p> <p>22 products and eventually separated products.</p>	<p style="text-align: right;">53</p> <p>1 commitment to purchase, would that capacity have</p> <p>2 been built?</p> <p>3 MR. MALKINSON: Objection, calls for</p> <p>4 speculation.</p> <p>5 A. No.</p> <p>6 BY MR. GREENE:</p> <p>7 Q. Were you in a position to know whether</p> <p>8 Center Fresh would have built without the Michael</p> <p>9 Foods commitment to purchase?</p> <p>10 A. Yes.</p> <p>11 Q. And, in fact, you were one of the</p> <p>12 decision makers, weren't you?</p> <p>13 A. Yes.</p> <p>14 MR. GREENE: Why don't we take a break.</p> <p>15 THE VIDEOGRAPHER: Off the record.</p> <p>16 (Whereupon, a recess was taken from</p> <p>17 11:20 a.m to 11:30 a.m.)</p> <p>18 THE VIDEOGRAPHER: On the record.</p> <p>19 BY MR. GREENE:</p> <p>20 Q. Mr. Henning, do you recognize an entity</p> <p>21 known as IPRO, I-P-R-O?</p> <p>22 A. Yes.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

15 (Pages 54 to 57)

<p style="text-align: right;">54</p> <p>1 Q. What is IPRO?</p> <p>2 A. It is a company that was set up to</p> <p>3 locate a facility site and construct a green field</p> <p>4 production operation for Michael's Foods. I'm</p> <p>5 sorry. For its investors to be contracted to</p> <p>6 Michael's Foods.</p> <p>7 Q. And what was your involvement with IPRO?</p> <p>8 A. I was the founder.</p> <p>9 Q. And who were the owners of IPRO?</p> <p>10 A. Myself and Steve George originally.</p> <p>11 Q. You used the term "green field." Can</p> <p>12 you explain who you mean when you say "green</p> <p>13 field"?</p> <p>14 A. As opposed to a taking over an existing</p> <p>15 facility and expanding it, it would be to locate,</p> <p>16 like we did at Freemont Farms of Iowa, a green</p> <p>17 field and start from scratch, permitting and</p> <p>18 construction of a new facility.</p> <p>19 Q. At the time -- let me ask you this.</p> <p>20 When was IPRO formed?</p> <p>21 A. 199- -- I'm sorry. 2004-ish.</p> <p>22 Q. And at the time that IPRO was formed,</p>	<p style="text-align: right;">56</p> <p>1 Henning Exhibit 5.</p> <p>2 A. Yes.</p> <p>3 Q. And do you recognize Henning Exhibit 5?</p> <p>4 A. Yes.</p> <p>5 Q. What is it?</p> <p>6 A. It is a letter from Steve George to</p> <p>7 Terry Baker regarding the transmittal of an</p> <p>8 executed supply agreement for IPRO II.</p> <p>9 Q. Okay. Now, I want to focus our</p> <p>10 attention on the supply agreement itself. So from</p> <p>11 this point on, if I refer to Henning Exhibit 5,</p> <p>12 will you understand that to be a reference to the</p> <p>13 supply agreement?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And as I understand it, the</p> <p>16 supply agreement is this entire Henning Exhibit 5</p> <p>17 except for the cover letter; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. This is dated, according to the first</p> <p>20 page of the supply agreement with Bates number</p> <p>21 82 -- ends 828, June 1st of 2005. Do you see that?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">55</p> <p>1 did IPRO have any egg production facilities?</p> <p>2 A. No.</p> <p>3 Q. Now, you said that it was -- that it was</p> <p>4 created for its investors, but to be contracted to</p> <p>5 Michael Foods. Can you explain what you mean by</p> <p>6 that?</p> <p>7 A. Not unlike Center Fresh or Fremont Farms</p> <p>8 of Iowa, we were under an agreement with Michael's</p> <p>9 Foods to take the output production of liquid eggs</p> <p>10 from this facility as and once it was constructed.</p> <p>11 Q. I'm going to show you what we'll mark as</p> <p>12 Henning Exhibit Number 5.</p> <p>13 (Henning Exhibit 5 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. GREENE:</p> <p>16 Q. Henning Exhibit Number 5 begins with a</p> <p>17 letter from IPRO II, LLC from Steve George to Terry</p> <p>18 Baker dated June 23, 2005 on the first page, and</p> <p>19 then after that, the second page and thereafter is</p> <p>20 a document that reads "Supply Agreement." The</p> <p>21 Bates numbers are MF10298827 through -851.</p> <p>22 Mr. Henning, would you please look at</p>	<p style="text-align: right;">57</p> <p>1 Q. And the term of this agreement is from</p> <p>2 the date of the agreement until December 31, 2017;</p> <p>3 is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. So this is a twelve-and-a-half-year</p> <p>6 term?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall any discussion as to why</p> <p>9 the term for this contract was twelve and a half</p> <p>10 years?</p> <p>11 A. Yes. It was a two-piecer. Number one</p> <p>12 is that we had to locate the facility, and that was</p> <p>13 going to take some permitting time. Number two was</p> <p>14 that the cost of these facilities was -- had</p> <p>15 increased greatly from the previous agreements and,</p> <p>16 therefore, we needed a longer-term commitment in</p> <p>17 order to have the Farm Credit financing work into</p> <p>18 the proforma.</p> <p>19 Q. When you say a longer-term commitment,</p> <p>20 do you mean a longer-term purchase commitment from</p> <p>21 the buyer?</p> <p>22 A. Correct.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 Q. Okay. And the buyer in this case is</p> <p>2 Michael Foods; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. As of June 2005, what was your</p> <p>5 understanding as to where these facilities would be</p> <p>6 located?</p> <p>7 A. I would have to give you background to</p> <p>8 get to that point.</p> <p>9 Q. Why don't you go ahead and give me the</p> <p>10 background as far as location for IPRO.</p> <p>11 A. IPRO originally was to be located in the</p> <p>12 midwest, not unlike the rest of the facilities</p> <p>13 we've previously discussed here. And as Michael's</p> <p>14 strategy and customer demands progressed, they</p> <p>15 decided that they would like to move this farther</p> <p>16 east towards their eastern marketplace.</p> <p>17 And so we went through the vetting of</p> <p>18 Illinois, Indiana and eventually Ohio. And so at</p> <p>19 this point in time -- I don't know where exactly</p> <p>20 that falls in that time frame, but eventually it</p> <p>21 was Ohio was the target.</p> <p>22 Q. I want to direct your attention to the</p>	<p style="text-align: right;">60</p> <p>1 see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it shows a quantity going</p> <p>4 from 2007 at 241,000 -- is that liquid pounds?</p> <p>5 A. Yes.</p> <p>6 Q. -- annual volume until 2011 for 111</p> <p>7 million liquid pounds. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then there is a paragraph</p> <p>10 that starts "It is agreed." I'm just going to read</p> <p>11 for the record.</p> <p>12 "It is agreed the producer shall</p> <p>13 undertake on a commercially reasonable basis</p> <p>14 efforts to secure financing and commence</p> <p>15 construction as soon as is practical. Producer</p> <p>16 will provide a volume forecast by month to Michael</p> <p>17 for the following twelve months on a quarterly</p> <p>18 basis.</p> <p>19 "During the term of this agreement and</p> <p>20 following completion of the production facilities,</p> <p>21 Michael agrees to purchase, and producer agrees to</p> <p>22 supply, quantities for approximately 4 million</p>
<p style="text-align: right;">59</p> <p>1 quantity page. Let's first look at page 7. Page 7</p> <p>2 of the supply agreement, which is Henning</p> <p>3 Exhibit 5, ending with a Bates number 834. Do you</p> <p>4 see that?</p> <p>5 A. Yes.</p> <p>6 Q. And there is a signature underneath</p> <p>7 IPRO II, LLC. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Whose signature is that?</p> <p>10 A. That's my signature.</p> <p>11 Q. And were you involved in negotiating</p> <p>12 this contract?</p> <p>13 A. Yes.</p> <p>14 Q. Were you involved in IPRO's decision to</p> <p>15 go forward with this contract?</p> <p>16 A. Yes.</p> <p>17 Q. Let's take a look at the next page of</p> <p>18 the supply agreement, Henning Exhibit 5. It says</p> <p>19 Exhibit A.</p> <p>20 A. Yes.</p> <p>21 Q. There is a table there that reads</p> <p>22 "Quantity, approximate pounds per year." Do you</p>	<p style="text-align: right;">61</p> <p>1 layer hens." Did I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. And the 4 million layer hens, was that</p> <p>4 the size of the additional housing that was to be</p> <p>5 built under this project?</p> <p>6 A. Yes. We permitted for 6 million birds,</p> <p>7 but only had contracted for four, allowing for</p> <p>8 expansion, should they request it.</p> <p>9 Q. Why did you allow for expansion?</p> <p>10 A. Because all of our previous projects</p> <p>11 grew, and we wanted to make sure in Ohio that we</p> <p>12 located, publicized and permitted for some</p> <p>13 expansion.</p> <p>14 Q. When you say all the previous projects</p> <p>15 grew, what do you mean?</p> <p>16 A. Well, when we did Fremont Farms of Iowa,</p> <p>17 it was originally going to be 1.350 and then 2.7</p> <p>18 and then 4 and eventually 5.2.</p> <p>19 Q. And why did they grow?</p> <p>20 A. Because they requested --</p> <p>21 MR. MALKINSON: Objection, calls for</p> <p>22 speculation, lack of foundation.</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 A. They asked us to expand to meet need. 2 BY MR. GREENE: 3 Q. And who is "they"? 4 A. Michael Foods. 5 Q. So at the time -- this line says, 6 "Michael agrees to purchase, and producer agrees to 7 supply, quantities produced from approximately 4 8 million layer hens." 9 At the time this was signed, did you 10 already have permitting started? 11 A. I don't know the exact date. 12 Q. And you said you were one of the owners 13 of IPRO, correct? 14 A. Correct. 15 Q. And one of the decision makers? 16 A. Yes. 17 Q. Why did IPRO agree to build housing for 18 4 million additional hens? 19 MR. MALKINSON: Objection, calls for 20 speculation, lack of foundation. 21 A. Michael's asked us to expand -- locate a 22 facility and expand to meet their needs on the East</p>	<p style="text-align: right;">64</p> <p>1 12(d) of the supply agreement marked as Henning 2 Exhibit 5. This is page 4 of the supply agreement. 3 It's the Bates number that ends 831. Do you see 4 that? 5 A. Yes, sir. 6 Q. Focusing your attention -- and whenever 7 I show you a document, you're free, of course, to 8 read as much as you want or any other portions of 9 the document. But directing your attention to 10 Section 12(d), it says, "The agreement shall 11 terminate automatically in the event Producer has 12 not commenced a supply of shell eggs and/or liquid 13 eggs to Michael hereunder by December 31, 2007, 14 unless an event of force majeure causes a delay, in 15 which case the date shall be extended accordingly." 16 Do you see that? 17 A. Yes, sir. 18 Q. After you signed the IPRO contract in 19 2005, what happened with respect to your efforts to 20 construct these facilities? 21 A. We ran into a difficult time locating 22 facility locations in Ohio. We spent a great deal</p>
<p style="text-align: right;">63</p> <p>1 Coast. 2 BY MR. GREENE: 3 Q. And from a business standpoint, from 4 IPRO's standpoint, why did you think that was a 5 good business proposition? 6 A. Because we were able to get a longer 7 contract commitment and we were able to expand a 8 business that -- and take care of our customer. 9 Q. Without Michael Foods' commitment to 10 purchase the output from these 4 million layers, 11 would IPRO have agreed to build the facilities? 12 A. No. 13 Q. Do you believe that you would have been 14 able to obtain financing to build housing for 15 4 million birds without Michael Foods' commitment 16 to purchase the output? 17 MR. MALKINSON: Object to form, calls 18 for speculation. 19 A. My experience would have said no. 20 BY MR. GREENE: 21 Q. I want to direct your attention to 22 Section 12(d) of the termination -- I'm sorry.</p>	<p style="text-align: right;">65</p> <p>1 of time vetting three or four ultimate candidates. 2 We entered into agreements to purchase those pieces 3 of property subject to, and then we went through 4 the ODA, Ohio Department of Agriculture, permitting 5 process which requires public meetings, et cetera. 6 And in two cases, we ended up with a 7 fair amount of local resistance to the NIMBY 8 livestock process that's going on in the country 9 nowadays. And so that caused us an extended period 10 to try and get the permits. 11 Q. You used a term I'm not sure I 12 recognize. Did you say NIMBY livestock? 13 A. Yes. 14 Q. Okay. Can you spell that and then tell 15 us what it means? 16 A. NIMBY. "Not in my backyard." 17 Q. Okay. So that's a reference to 18 community or local opposition? 19 A. Community activism, yes. Mm-hmm. 20 Q. Were facilities completed -- withdrawn. 21 Were you able to supply eggs to Michael 22 Foods under the IPRO contract by December 31, 2007?</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 A. We were not.</p> <p>2 Q. And what did Michael Foods do in</p> <p>3 response to that?</p> <p>4 A. We were in constant contact with them</p> <p>5 through the entire site-vetting process, the</p> <p>6 permitting process, and it became evident that that</p> <p>7 time frame was not going to be met. And we</p> <p>8 contacted them, and they agreed that we should</p> <p>9 continue to pursue it.</p> <p>10 Q. And from your perspective, did they</p> <p>11 remain committed to purchase the output from IPRO?</p> <p>12 A. Absolutely, on a continuing basis.</p> <p>13 Q. And you continued -- did you continue at</p> <p>14 that point to invest time and money in getting the</p> <p>15 IPRO project sited?</p> <p>16 A. We did.</p> <p>17 Q. And in doing that, did you rely on</p> <p>18 Michael Foods' commitment to continue to be willing</p> <p>19 to purchase the output from the additional</p> <p>20 construction?</p> <p>21 MR. MALKINSON: Object to form.</p> <p>22 A. Yes, we did.</p>	<p style="text-align: right;">68</p> <p>1 the second page is the attachment to the item that</p> <p>2 ends Bates number 5216. That's why it doesn't</p> <p>3 print with a Bates number, but it's my</p> <p>4 understanding that it is the attachment to the item</p> <p>5 that has the Bates number.</p> <p>6 MR. MALKINSON: Did it come out of the</p> <p>7 repository?</p> <p>8 MR. GREENE: It did come out of the</p> <p>9 repository. And I may have a -- it's my</p> <p>10 understanding that there just is an issue with</p> <p>11 printing a native attachment. I do not pretend to</p> <p>12 be the expert on such things.</p> <p>13 MR. RAYLE: For the record, we have had</p> <p>14 similar problems.</p> <p>15 MR. GREENE: I believe -- and this is,</p> <p>16 again -- I am getting this from somebody in my</p> <p>17 office. I believe the attachment is numbered</p> <p>18 MFI0045217, but it doesn't print that way. And so</p> <p>19 I've now represented just about everything I can</p> <p>20 represent about the Bates number of this document.</p> <p>21 BY MR. GREENE:</p> <p>22 Q. I'm showing you Henning Exhibit 6. And</p>
<p style="text-align: right;">67</p> <p>1 BY MR. GREENE:</p> <p>2 Q. During the period from the inception of</p> <p>3 IPRO through, let's say, the end of 2008, did</p> <p>4 Michael Foods ever withdraw its commitment to</p> <p>5 purchase the output from 4 million layers under the</p> <p>6 IPRO contract?</p> <p>7 A. No, they did not. And they actually</p> <p>8 encouraged us to vigorously pursue it.</p> <p>9 MR. MALKINSON: Move to strike the last</p> <p>10 part of his answer as nonresponsive.</p> <p>11 BY MR. MALKINSON:</p> <p>12 Q. I'm going to ask the court reporter to</p> <p>13 mark as Henning Exhibit 6 --</p> <p>14 (Henning Exhibit 6 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. MALKINSON:</p> <p>17 Q. This is an e-mail from Steve George to</p> <p>18 Terry Baker, copied to persons including Jeff</p> <p>19 Henning, subject "IPRO Schedule - Confidential."</p> <p>20 Bates number MFI0045216. And there is no Bates</p> <p>21 number on the second page. I'll represent to</p> <p>22 counsel and to the witness it's my understanding</p>	<p style="text-align: right;">69</p> <p>1 this is a document dated September 5th 2007 from</p> <p>2 Steve George to Terry Baker. You see you're copied</p> <p>3 on that, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Is this an e-mail you, in fact,</p> <p>6 received?</p> <p>7 A. Yes.</p> <p>8 Q. And this is a -- the document begins,</p> <p>9 "Dear Terry, good to hear from you. Below is the</p> <p>10 latest IPRO schedule based on current assumptions."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And can you explain, then, reading the</p> <p>14 document what the -- what the IPRO schedule is that</p> <p>15 was -- that was being communicated?</p> <p>16 A. Yes. This indicated that should the</p> <p>17 permitting process soon go from August '07 through</p> <p>18 March of '08, we would commence construction on the</p> <p>19 pullet facilities in April of '08, commence</p> <p>20 concrete pad pour on the layer houses in April of</p> <p>21 '08, continuing on through 2008. And house layer</p> <p>22 flock one December 7th of '08, flock 2, February</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 8th of '09, flock 3, April 12th of '09 and turn on 2 the breaking plant approximately April 15th of 3 2009, so that they had the ability to forecast this 4 into their supply chain. 5 Q. And if you can look at the attachment, 6 and you can see this flock schedule and it goes 7 from one to ten, although 1 and 2, there's a 1A, 8 1B, 2A and 2B. What do those numbers from 1 to 10 9 represent? 10 A. These are the buildings. And so you 11 have two sides to the building. We don't house 12 them all at once. We house them in two stages, so 13 you have an A and B to each building. 14 Q. And how many layers are there per 15 building? 16 A. 400,000. 17 Q. So this flock schedule on the attachment 18 to Henning Exhibit 6, the ten flock -- the 19 ten-flock buildings represent 4 million layers; is 20 that correct? 21 A. Yes. 22 Q. So this is now September of 2007. This</p>	<p style="text-align: right;">72</p> <p>1 BY MR. GREENE: 2 Q. Did they indicate to you during this 3 time frame in 2007 that they had given up on IPRO? 4 MR. MALKINSON: Objection, calls for -- 5 strike that. 6 Objection, hearsay. Calls for hearsay. 7 A. They did not tell me that. 8 BY MR. GREENE: 9 Q. I'm going to ask to mark as Henning 10 Exhibit 7 a copy of the United Voices dated 11 November 30th 2007, Bates numbers FMI0056110 12 through -118. 13 (Henning Exhibit 7 was marked for 14 identification.) 15 BY MR. GREENE: 16 Q. Mr. Henning, you can certainly read as 17 much of the document as you would like. I'm going 18 to direct your attention to the bottom of the first 19 page, an item marked with the title "Plans 20 Announced to Build Six (6) Million Bird Complex." 21 Do you see that particular section of United 22 Voices?</p>
<p style="text-align: right;">71</p> <p>1 is two years after the IPRO contract was signed, 2 correct? A little bit more than two years after? 3 A. Yes. Two and a half, I think. 4 Q. And just to refresh your recollection, 5 Henning Exhibit 5 is dated June of 2005. So a 6 little bit more than two years? 7 A. Correct. 8 Q. At this point, was it still your 9 expectation that you would be proceeding forward 10 with building housing for an additional 4 million 11 layers under the IPRO contract? 12 A. Yes. 13 Q. And based on your discussions with 14 personnel at Michael Foods, did you understand that 15 Michael Foods' personnel continued to expect the 16 construction of housing for an additional 4 million 17 hens? 18 MR. MALKINSON: Objection, calls for 19 hearsay. 20 A. They requested the information that we 21 produced, and their explanation to us was they 22 needed it to forecast it into their supply chain.</p>	<p style="text-align: right;">73</p> <p>1 A. Yes. 2 Q. All right. Are you familiar with the 3 publication United Voices? 4 A. Yes. I'm a member of United Egg 5 Producers. 6 Q. Okay. And toward the bottom of the 7 first page, there is a story in United Voices that 8 reads "An application has been filed with the Ohio 9 Department of Agriculture for the construction of a 10 complex with housing for 6 million laying hens. 11 "The company, Hi-Q Egg Products, will 12 reportedly build a new farm near West Mansfield, 13 Ohio, and produce an estimated 375,000 pounds of 14 liquid egg product daily for use by bakeries and 15 others in the food processing industry. The 16 company hopes to break ground in April 2008 and 17 complete the first phase of construction by October 18 2010." Do you see that? 19 A. Yes. 20 MR. MALKINSON: Objection, move to 21 strike, lack of foundation. 22 BY MR. GREENE:</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 Q. Did I read it correctly?</p> <p>2 A. Yes.</p> <p>3 Q. My only question here is there's a</p> <p>4 reference in this United Voices to a company called</p> <p>5 Hi-Q Egg Products. Do you recognize that name?</p> <p>6 A. Yes.</p> <p>7 Q. What is Hi-Q Egg Products?</p> <p>8 A. It is the name under which IPRO made</p> <p>9 application to ODA for the permit at this site.</p> <p>10 Q. And this site -- there is a reference to</p> <p>11 West Mansfield, Ohio. What happened in West</p> <p>12 Mansfield, Ohio?</p> <p>13 A. That was the particular piece of</p> <p>14 property that we successfully optioned and</p> <p>15 engineered and submitted for approval to ODA for</p> <p>16 the permit for 6 million hens.</p> <p>17 Q. So would it be fair to say that IPRO</p> <p>18 then became Hi-Q?</p> <p>19 A. Or d/b/a.</p> <p>20 Q. Or d/b/a? Okay. So IPRO was doing</p> <p>21 business as Hi-Q?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">76</p> <p>1 through the public hearings. And the -- under Ohio</p> <p>2 law, the commissioner of egg has a couple of months</p> <p>3 to vet politically this process. There was an</p> <p>4 election. There was a change in the department</p> <p>5 director. And ultimately the permit was not</p> <p>6 granted.</p> <p>7 Q. How long did that process take?</p> <p>8 A. I believe that it was well into 2009 or</p> <p>9 '10.</p> <p>10 Q. And ultimately did Hi-Q get government</p> <p>11 approval?</p> <p>12 A. No. The -- no.</p> <p>13 Q. It was denied?</p> <p>14 A. That's correct. The permit was denied.</p> <p>15 Q. Was Michael Foods responsible in any way</p> <p>16 for the problems that you encountered in getting</p> <p>17 the construction of the housing for these 4 million</p> <p>18 birds built?</p> <p>19 MR. MALKINSON: Objection, lack of</p> <p>20 foundation.</p> <p>21 A. No. Quite frankly, the issues were</p> <p>22 focused -- under ODA law, the issues were focused</p>
<p style="text-align: right;">75</p> <p>1 Q. That's still -- when we talk about Hi-Q,</p> <p>2 we are talking about a company that you were still</p> <p>3 part owner of, correct?</p> <p>4 A. Correct.</p> <p>5 Q. One of the principals, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. What happened to -- withdrawn.</p> <p>8 Did you, in fact -- did Hi-Q, in fact,</p> <p>9 file an application to start the permitting process</p> <p>10 in West Mansfield, Ohio?</p> <p>11 A. Yes. I'm sure the public notice is what</p> <p>12 triggered this particular article.</p> <p>13 Q. There was a public notice?</p> <p>14 A. Yes.</p> <p>15 Q. And that would have indicated the</p> <p>16 location and the number of hens?</p> <p>17 A. Correct.</p> <p>18 Q. What happened regarding your efforts to</p> <p>19 get housing for 6 million hens permitted in West</p> <p>20 Mansfield, Ohio?</p> <p>21 A. We successfully completed all the due</p> <p>22 diligence. We submitted the package. We went</p>	<p style="text-align: right;">77</p> <p>1 on the operator, not the market.</p> <p>2 BY MR. GREENE:</p> <p>3 Q. Throughout the period from the time that</p> <p>4 IPRO was formed until the permit was ultimately</p> <p>5 denied for Hi-Q, was Michael Foods supportive of</p> <p>6 the IPRO project?</p> <p>7 A. Yes.</p> <p>8 MR. MALKINSON: Objection, calls -- go</p> <p>9 ahead.</p> <p>10 BY MR. GREENE:</p> <p>11 Q. From your perspective and your</p> <p>12 understanding, was Michael's Foods supportive of</p> <p>13 the project?</p> <p>14 A. Yes, they were. The operator got</p> <p>15 approved, but the permit got denied.</p> <p>16 Q. From your perspective, it wasn't in any</p> <p>17 way Michael Foods' fault?</p> <p>18 MR. MALKINSON: Object to form.</p> <p>19 A. No, sir.</p> <p>20 MR. GREENE: Okay. Why don't we take</p> <p>21 another break.</p> <p>22 THE VIDEOGRAPHER: Off the record.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 (Whereupon, a recess was taken from 2 12:02 p.m to 12:08 p.m.) 3 THE VIDEOGRAPHER: On the record. 4 BY MR. GREENE: 5 Q. Just one or two additional questions at 6 this time, Mr. Henning. You talked earlier about 7 the specific product that was called for under the 8 Fremont Farms of Iowa contracts. You testified 9 about the specific product that was called for 10 under the Center Fresh contract. I want to ask you 11 the same question under the IPRO contract. 12 Under the IPRO contract, what was the 13 specific product that IPRO was to be providing 14 Michael Foods? 15 MR. MALKINSON: Objection. The contract 16 speaks for itself. 17 BY MR. GREENE: 18 Q. And just for the record, you're looking 19 at Henning Exhibit -- 20 A. Five. 21 Q. Five. 22 A. Separated eggs --</p>	<p style="text-align: right;">80</p> <p>1 THE VIDEOGRAPHER: Off the record. 2 (Whereupon, at 12:10 p.m. a lunch recess 3 was taken.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">79</p> <p>1 Q. You're looking at -- 2 A. -- either whole -- I'm sorry. On page 8 3 of that supply agreement. 4 Q. And that's Henning Exhibit 5, right? 5 A. Yes, sir. 6 Q. Okay. Page 8. 7 A. They have the option to have either 8 whole eggs or separated. 9 Q. And are these all liquid eggs? 10 A. All liquid eggs. 11 Q. Are they pasteurized or unpasteurized? 12 A. Unpasteurized. 13 Q. And they would be delivered in what 14 form? 15 A. FOBR docks and tanker loads. 16 MR. GREENE: No further questions at 17 this time. 18 MR. MALKINSON: Okay. We'll take a 19 lunch break. 20 MR. GREENE: Okay. We're going to take 21 a lunch break. I've got 12:10. Do you want to set 22 a time? Why don't we go off the record.</p>	<p style="text-align: right;">81</p> <p>1 AFTERNOON SESSION 2 (1:06 p.m.) 3 * * * * * 4 Whereupon, 5 JEFFRY LYNN HENNING, 6 the witness testifying at the time of 7 recess, having been previously duly 8 sworn, was further examined and testified 9 as follows. 10 * * * * * 11 THE VIDEOGRAPHER: On the record. 12 MR. MALKINSON: Okay. Just to clarify, 13 we had a discussion a moment ago before we 14 commenced about whether or not defense counsel was 15 indicating that there is a standard stipulation in 16 these depositions that all objections are reserved 17 other than as to form. That's not the information 18 that I have, and so I'm not in a position to agree 19 to that and I'm not agreeing to that for today's 20 deposition. 21 MR. GREENE: Okay. The other 22 stipulation I mentioned was an objection of one is</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 an objection of all. In this case, there is only 2 one other defense counsel, I think, on the phone. 3 But are you agreeable to that stipulation so that 4 not every lawyer has to make the same objection? 5 MR. MALKINSON: I can only say that I'm 6 sticking with my instructions and that I'm not 7 agreeing. 8 MR. GREENE: Okay. Well, then if 9 there's a need for objections, everyone needs to 10 know they've got to raise their own voice. 11 MR. MALKINSON: Counsel for Rose Acre, 12 do you have any questions for the deponent? 13 MS. ALLEN: No, not at this time. Thank 14 you. 15 EXAMINATION BY COUNSEL FOR THE DIRECT 16 PURCHASERS PLAINTIFFS 17 BY MR. MALKINSON: 18 Q. Mr. Henning, my name is John Malkinson. 19 We met this morning. I'm one of the attorneys that 20 represents the Direct Purchaser Plaintiffs in this 21 lawsuit. I know that you are not represented here 22 by counsel at today's deposition, but am I correct</p>	<p style="text-align: right;">84</p> <p>1 Q. Okay. Based on your testimony, you do a 2 lot of business with Michael Foods; you have for 3 over 25 years, true? 4 A. Yes. 5 Q. I'm gathering that based on the 6 contracts that we've seen today that you've had 7 with Michael Foods that you know several of the 8 people, the principals in that company, true? 9 A. Yes. 10 Q. And some of them, Terry Baker, perhaps, 11 and others are people that you consider friends of 12 yours? 13 A. Business friends, yes. 14 Q. Have you ever done anything socially 15 with some of the folks, executives from Michael 16 Foods? 17 A. No. 18 Q. Have you ever entertained them at a -- I 19 forget what it's called, a Henning Poultry 20 Conference? 21 A. No. 22 Q. The contracts that we saw today, those</p>
<p style="text-align: right;">83</p> <p>1 that this is kind of home turf for you? Is this a 2 law firm that you have done business with before, 3 where we are situated presently? 4 A. One of our affiliates has, yes. 5 Q. That's the Bradshaw Fowler firm that's 6 hosting this deposition today? 7 A. Yes. 8 Q. And you know some of the lawyers here at 9 Bradshaw, Bradshaw's office? 10 A. Two. 11 Q. You were not served with a subpoena in 12 this case, true? 13 A. False. 14 Q. You were served with a subpoena? 15 A. Yes. 16 Q. Did you bring that with you? 17 MR. GREENE: I have it, if you want it. 18 MR. RAYLE: I'd like it marked. 19 A. Is this what you're looking for, sir? 20 (Henning Exhibit 8 was marked for 21 identification.) 22 BY MR. MALKINSON:</p>	<p style="text-align: right;">85</p> <p>1 alone have generated millions of dollars in revenue 2 for businesses that you have an ownership interest 3 in, true? 4 A. Yes. 5 Q. You have a personal interest in 6 continuing to do business with Michael Foods going 7 forward, true? 8 A. A business interest? 9 Q. Yes. You have a business interest in 10 continuing to do business with them? 11 A. That would be nice. 12 Q. When were you first contacted about 13 giving a deposition in this case? 14 A. Two months ago possibly. 15 Q. Were you contacted by someone from 16 Michael Foods or one of their lawyers? 17 A. It was at the direction of Mr. Greene. 18 Q. How many times have you met with 19 Mr. Greene before today's testimony? 20 A. Two. Once on the phone and once in 21 person. 22 Q. The time on the phone was approximately</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 when?</p> <p>2 A. 45 days ago, 60 days ago.</p> <p>3 Q. And for how long did you speak with him?</p> <p>4 A. 35 minutes.</p> <p>5 Q. When you met with him in person, when</p> <p>6 was that?</p> <p>7 A. 30 days ago.</p> <p>8 Q. And how long was that meeting?</p> <p>9 A. An hour and a quarter maybe.</p> <p>10 Q. Did he fly or -- strike that.</p> <p>11 Did he travel out to Iowa to meet with</p> <p>12 you?</p> <p>13 A. Yes.</p> <p>14 Q. And you understood that he came from</p> <p>15 where?</p> <p>16 A. Minneapolis.</p> <p>17 Q. Were you shown documents at that</p> <p>18 meeting?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever resist the notion of</p> <p>21 providing testimony for Michael Foods in this case?</p> <p>22 MR. GREENE: Objection, vague and</p>	<p style="text-align: right;">88</p> <p>1 least hundreds of pages of documents related to</p> <p>2 business that you and your -- and businesses that</p> <p>3 you're involved with have had with Michael Foods?</p> <p>4 A. I couldn't conjecture on how many there</p> <p>5 are.</p> <p>6 Q. Were the three supply contracts that you</p> <p>7 were presented with earlier today the only supply</p> <p>8 contracts you've entered into with Michael Foods on</p> <p>9 behalf of any of the businesses you're affiliated</p> <p>10 with?</p> <p>11 A. No.</p> <p>12 Q. There are others?</p> <p>13 A. One possibly. Or two.</p> <p>14 Q. Did any of those contracts, to your</p> <p>15 knowledge, address layer hen density as any</p> <p>16 requirement or goal of the contract?</p> <p>17 A. Yes.</p> <p>18 Q. Did the contracts we looked at today</p> <p>19 address that?</p> <p>20 A. Yes.</p> <p>21 Q. What's your understanding of what those</p> <p>22 contracts provide in terms of layer hen density?</p>
<p style="text-align: right;">87</p> <p>1 argumentative.</p> <p>2 A. No.</p> <p>3 BY MR. MALKINSON:</p> <p>4 Q. If you could help them in some way, you</p> <p>5 would?</p> <p>6 MR. GREENE: Objection, argumentative.</p> <p>7 A. I would say to you that certainly it was</p> <p>8 appropriate to do that.</p> <p>9 BY MR. MALKINSON:</p> <p>10 Q. If they had asked you to appear here and</p> <p>11 schedule a time to appear and testify in the</p> <p>12 absence of a subpoena, you would have been</p> <p>13 agreeable to that?</p> <p>14 A. Not necessarily.</p> <p>15 Q. Showing you what has been marked as</p> <p>16 Henning Exhibit No. 8, is that the subpoena that</p> <p>17 you were issued?</p> <p>18 A. Yes.</p> <p>19 Q. It doesn't call for you producing any</p> <p>20 documents for your testimony, true?</p> <p>21 A. True.</p> <p>22 Q. And I would guess that there are at</p>	<p style="text-align: right;">89</p> <p>1 We'll go one by one. With the Fremont.</p> <p>2 MR. GREENE: I'm just going to say,</p> <p>3 objection, vague, and the contract speaks for</p> <p>4 itself.</p> <p>5 A. Fremont calls for a density of 48 square</p> <p>6 inches. It allows a density of 48 square inches.</p> <p>7 BY MR. MALKINSON:</p> <p>8 Q. In fulfilling that contract, is that the</p> <p>9 density that was provided throughout?</p> <p>10 A. Yes.</p> <p>11 Q. That density can be modified by the user</p> <p>12 by removing some layer hens, true?</p> <p>13 A. Yes.</p> <p>14 Q. Was that ever done, to your knowledge?</p> <p>15 A. No, it was not.</p> <p>16 Q. Was Freemont Farms ever a --</p> <p>17 A. May I reanswer the last question?</p> <p>18 Q. Sure.</p> <p>19 A. I need to expand on that. When I say</p> <p>20 yes, you said the user, which is us --</p> <p>21 Q. True.</p> <p>22 A. -- the operator, could reduce the</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 density, but we would have to expand the buildings 2 because we have a contractual liability for X 3 amount of production. 4 Q. I take it you never did that? 5 A. We never did that. 6 Q. In the contracts that you identified 7 this morning, one of the provisions is that Michael 8 Foods pays for the feed for the birds? 9 A. Yes. 10 Q. Even though -- 11 A. Excuse me. No. That's wrong. The 12 operator pays for the feed. 13 Q. At some point, am I correct that with, I 14 believe, Fremont Farms an issue came up as to the 15 increased cost of feed in conjunction with your 16 supply agreement with Michael Foods? 17 A. It is a grain-based cost-adjustment 18 contract. 19 Q. What does that mean? 20 A. It means that confidentially, the cost 21 of the feed is adjusted monthly based on the 22 Chicago Board of Trade, plus or minus a basis</p>	<p style="text-align: right;">92</p> <p>1 identification.) 2 3 BY MR. MALKINSON: 4 Q. Mr. Henning, I'm showing you a 5 three-page exhibit that's marked as Henning Exhibit 6 Number 9. It's -- the first page is an e-mail. 7 You're one of the recipients. It's from Steve 8 George. And it has to do with an FFI supply 9 contract adjustment. Could you take a moment to 10 look at that and let me know when you're done? 11 A. The memo or the entire thing, sir? 12 Q. Excuse me? 13 A. The memo or the entire document? 14 Q. Yeah. Just look at the three pages just 15 to familiarize yourself with what it is, please. I 16 guess it's a four-page document, not three. 17 A. (Reading). Yes, sir. 18 Q. So you mentioned a moment ago that 19 Michael -- strike that. 20 You mentioned a moment ago that the 21 operator, which would be your company, was 22 responsible for the feed costs in the Michael Foods</p>
<p style="text-align: right;">91</p> <p>1 issue. 2 MR. GREENE: Can we stop for a moment 3 and ask the law firm to make a copy? Are there 4 going to be other similar exhibits where -- 5 MR. MALKINSON: There might be. I don't 6 know how many of these I'm actually going to use. 7 I don't want to deprive you from the -- 8 MR. RAYLE: I'd like to have a copy in 9 front of me. 10 MR. GREENE: I think it's the ordinary 11 process to have copies available. So let me 12 suggest this. Why don't we take a break. Why 13 don't you look through and see if there are some 14 other things you may want to use and have copied. 15 If you don't use them, you don't use them. But -- 16 MR. MALKINSON: Okay. 17 MR. GREENE: All right. 18 THE VIDEOGRAPHER: Off the record. 19 (Whereupon, a recess was taken from 1:17 20 p.m to 1:44 p.m.) 21 THE VIDEOGRAPHER: On the record. 22 (Henning Exhibit 9 was marked for</p>	<p style="text-align: right;">93</p> <p>1 Fremont project, true? 2 A. Yes, sir. 3 Q. And could you explain for me what this 4 document is, which to my reading is asking for 5 Michael Foods to make adjustments because of your 6 increased food cost -- feed cost. 7 A. No. The truth of the matter here is 8 that Michael's has a CBOT adjusting portion for 9 grains and beans. 10 Q. What is a CB -- 11 A. Chicago Board of Trade. 12 In the month prior, they set the price 13 for the next month, and we buy and sell against 14 that process, plus or minus a basis that's in the 15 contract. And there were things outside of the 16 normal cost of feed that needed to be adjusted 17 because they weren't allowed for appropriately in 18 the original contract. 19 And this was the opening discussions on 20 adding a pullet feed cost adjustment factor to the 21 contract. It was a tweak to the contract language. 22 Q. And the original contract did not</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 provide for Michael Foods having to be responsible</p> <p>2 for those additional costs, true?</p> <p>3 A. Correct.</p> <p>4 Q. Did they ultimately agree?</p> <p>5 A. Yes.</p> <p>6 Q. And so they accommodated your request at</p> <p>7 that time?</p> <p>8 A. Yes.</p> <p>9 Q. And according to this Exhibit Number 9,</p> <p>10 the cost increase in those other items that you're</p> <p>11 referring to on page 2, which is MFI0297924, it</p> <p>12 says on the top line actually beginning from the</p> <p>13 previous page, "Jeff Henning and Steve George</p> <p>14 stressed that the financial impact to FFI was well</p> <p>15 over \$1 million annually and that this needed to be</p> <p>16 addressed as soon as possible." That's a true</p> <p>17 statement?</p> <p>18 A. Yes.</p> <p>19 Q. So that your colleagues at Michael Foods</p> <p>20 came through for you and helped you abate that type</p> <p>21 of ongoing loss under the contract, true?</p> <p>22 MR. GREENE: Objection to the</p>	<p style="text-align: right;">96</p> <p>1 deposition.</p> <p>2 Q. How long did you talk to him for?</p> <p>3 A. About this subject matter, the length of</p> <p>4 me to say that to you.</p> <p>5 Q. Did you speak with anyone else in the</p> <p>6 egg industry about the fact of your deposition?</p> <p>7 A. Yes.</p> <p>8 Q. Who?</p> <p>9 A. Bill Rehm. Daybreak Foods.</p> <p>10 Q. What did you tell him?</p> <p>11 A. That I was going to be giving a</p> <p>12 deposition.</p> <p>13 Q. Did you ask him anything about whether</p> <p>14 he had given a deposition?</p> <p>15 A. No.</p> <p>16 Q. Did you have any substantive discussion</p> <p>17 about the deposition at all?</p> <p>18 A. No.</p> <p>19 Q. And did he call you to ask you, or how</p> <p>20 did that conversation come about?</p> <p>21 A. He's a regular customer of ours in the</p> <p>22 construction business and I do a lot of</p>
<p style="text-align: right;">95</p> <p>1 characterization and argumentative.</p> <p>2 A. Michael's Foods partnered with us to</p> <p>3 meet in the middle on both these issues so that</p> <p>4 both parties could continue to give and receive.</p> <p>5 BY MR. MALKINSON:</p> <p>6 Q. When you met with Mr. Greene today, who</p> <p>7 did you meet with besides him?</p> <p>8 A. I'm sorry. I was concentrating on 9. I</p> <p>9 apologize. Say it again.</p> <p>10 Q. When you met with Mr. Greene today, who</p> <p>11 else did you meet with?</p> <p>12 A. Pete. For part of the meeting with his</p> <p>13 accomplice.</p> <p>14 Q. Have you ever spoken to anyone at</p> <p>15 Michael Foods about the fact that you were giving a</p> <p>16 deposition?</p> <p>17 A. Yes.</p> <p>18 Q. With whom did you speak?</p> <p>19 A. Terry Baker.</p> <p>20 Q. And when was that, roughly?</p> <p>21 A. In the last month, I told him that I had</p> <p>22 been contacted and was going to be giving a</p>	<p style="text-align: right;">97</p> <p>1 construction and design-build work for him relative</p> <p>2 to various complexes for Michael's and other</p> <p>3 customers.</p> <p>4 Q. Is Daybreak Foods a supplier to Michael</p> <p>5 Foods?</p> <p>6 MR. GREENE: Objection.</p> <p>7 BY MR. MALKINSON</p> <p>8 Q. Strike that.</p> <p>9 Is Daybreak, to your knowledge, a</p> <p>10 supplier to Michael Foods?</p> <p>11 A. Yes.</p> <p>12 Q. Does Michael Foods have its own laying</p> <p>13 facilities?</p> <p>14 A. Yes.</p> <p>15 Q. You mentioned earlier that you were a</p> <p>16 member of the UEP. When did you first become a</p> <p>17 member?</p> <p>18 A. I have no idea. I've been an allied</p> <p>19 member for as long as I've been in the construction</p> <p>20 business and in chickens. So I would guess 20</p> <p>21 years.</p> <p>22 Q. Is there a difference between an allied</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 member and just a regular member?</p> <p>2 A. There are several categories. An allied</p> <p>3 member would be a supplier or vendor, like the</p> <p>4 construction company.</p> <p>5 Q. Have you ever been a member in any</p> <p>6 capacity other than an allied member?</p> <p>7 A. Yes.</p> <p>8 Q. Have you been a member as a producer?</p> <p>9 A. Lately in the cage-free business.</p> <p>10 Q. When did that begin, roughly?</p> <p>11 A. Three years ago.</p> <p>12 Q. Prior to three years ago, was your only</p> <p>13 membership an allied membership?</p> <p>14 A. Yes.</p> <p>15 Q. Were any of the various, for lack of a</p> <p>16 better phrase, laying companies and other egg</p> <p>17 companies that you listed earlier today that you</p> <p>18 have a partnership or other ownership interest in</p> <p>19 ever members of the UEP?</p> <p>20 (Whereupon, the requested portion of</p> <p>21 testimony was read back by the reporter.)</p> <p>22 BY MR. MALKINSON:</p>	<p style="text-align: right;">100</p> <p>1 A. 1997.</p> <p>2 Q. So when you would attend UEP meetings as</p> <p>3 a member, as an allied member, were there also</p> <p>4 other people that would sometimes be present from</p> <p>5 one or more of these four companies that you listed</p> <p>6 at the same meetings?</p> <p>7 A. Yes.</p> <p>8 Q. Was Fremont Farms ever a member of the</p> <p>9 UEP's animal welfare committee?</p> <p>10 A. The representative from Fremont Farms, I</p> <p>11 do believe, was on the animal welfare committee,</p> <p>12 yes.</p> <p>13 Q. Were the representatives of any of the</p> <p>14 other three companies that you mentioned which you</p> <p>15 have an ownership interest in members of that</p> <p>16 committee at any time?</p> <p>17 A. I cannot say exactly. Sorry.</p> <p>18 MR. MALKINSON: Can I please see the</p> <p>19 exhibits from this morning?</p> <p>20 BY MR. MALKINSON:</p> <p>21 Q. Mr. Henning, I'm showing you Henning</p> <p>22 Exhibit Number 2, the supply agreement with Fremont</p>
<p style="text-align: right;">99</p> <p>1 Q. Earlier today you identified a variety</p> <p>2 of egg companies that you have an ownership or</p> <p>3 partnership interest in. Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. At any time, have any of those companies</p> <p>6 been members of the UEP or any executives of those</p> <p>7 companies been members of the UEP?</p> <p>8 A. Yes.</p> <p>9 Q. And were they members as producing</p> <p>10 members, producer members?</p> <p>11 A. Yes.</p> <p>12 Q. Which ones?</p> <p>13 A. Center Fresh, Hawkeye, Fremont Farms of</p> <p>14 Iowa, Trillium.</p> <p>15 Q. How do you spell that?</p> <p>16 A. T-r-i-l-l-i-u-m.</p> <p>17 Q. If we were to pick the company whose</p> <p>18 membership as a producer of the UEP goes back to</p> <p>19 the earliest date, which of those four would it be?</p> <p>20 A. Fremont Farms of Iowa.</p> <p>21 Q. And they became a member approximately</p> <p>22 when?</p>	<p style="text-align: right;">101</p> <p>1 Farms that you testified to earlier. Can you</p> <p>2 please point out to me where the laying hen density</p> <p>3 is set forth in that document?</p> <p>4 A. Page 6, (i). It would be section 14(i)</p> <p>5 on page 6.</p> <p>6 BY MR. MALKINSON:</p> <p>7 Q. Okay. Could I have that back, please?</p> <p>8 And that section simply refers to Animal Welfare</p> <p>9 Bird specifications, certifications and guidelines.</p> <p>10 It doesn't state 48 square inches, correct?</p> <p>11 A. It does state as in the past.</p> <p>12 Q. And so it's your testimony that at the</p> <p>13 time this was executed, they were using a minimum</p> <p>14 48-inch -- 48-square-inch density?</p> <p>15 A. Yes.</p> <p>16 Q. Did the fact of the UEP animal</p> <p>17 certification density requirements ever factor into</p> <p>18 discussions with Michael Foods in connection with</p> <p>19 the Fremont Farms arrangements?</p> <p>20 MR. GREENE: Objection, confusing.</p> <p>21 A. "Factor in," what does that mean?</p> <p>22</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 BY MR. MALKINSON</p> <p>2 Q. Were you ever told that you had to</p> <p>3 comply, they had to change the density, anything</p> <p>4 like that?</p> <p>5 A. No. As you can see in the contract</p> <p>6 language, it is as-is.</p> <p>7 Q. I understand what the contract says.</p> <p>8 I'm asking you if at any time after this contract</p> <p>9 was entered anyone from Michael Foods told you that</p> <p>10 needed to have an arrangement that was different?</p> <p>11 A. No. No, sir.</p> <p>12 Q. What does the phrase "UEP compliant"</p> <p>13 mean to you in terms of hen density?</p> <p>14 MR. GREENE: Objection, lack of</p> <p>15 foundation.</p> <p>16 A. "UEP compliant" in terms of hen density,</p> <p>17 which isn't what it means in that contract, means</p> <p>18 67 square inches per hen.</p> <p>19 BY MR. MALKINSON:</p> <p>20 Q. And that became true approximately when?</p> <p>21 A. I don't know. Three, four, five years</p> <p>22 ago.</p>	<p style="text-align: right;">104</p> <p>1 MR. GREENE: Objection, same objection.</p> <p>2 A. I am not an attorney.</p> <p>3 BY MR. MALKINSON:</p> <p>4 Q. Well, you're an egg producer, aren't</p> <p>5 you, sir?</p> <p>6 A. I am, sir.</p> <p>7 Q. Okay. And you're a member of the UEP?</p> <p>8 A. I am.</p> <p>9 Q. And Fremont Farms was a member of the</p> <p>10 UEP, true?</p> <p>11 A. Yes.</p> <p>12 Q. I presume you had to analyze whether or</p> <p>13 not it was an appropriate business decision for</p> <p>14 you, for Fremont Farms to be -- to try to seek UEP</p> <p>15 certification at some point, true?</p> <p>16 A. No. We didn't need to do that.</p> <p>17 Q. Why not?</p> <p>18 A. Because our contract doesn't request</p> <p>19 that.</p> <p>20 Q. Your testimony is that Michael Foods</p> <p>21 never approached or discussed with you having any</p> <p>22 of the facilities you were involved with that</p>
<p style="text-align: right;">103</p> <p>1 Q. You are familiar with the requirements</p> <p>2 of an egg producer in order to be able to get a UEP</p> <p>3 certification on their egg production?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And what are those requirements?</p> <p>6 A. Oh, it's 14 pages, and I'm not going to</p> <p>7 be able to read them all to you out of my head.</p> <p>8 Q. In terms of hen density, what are the</p> <p>9 requirements?</p> <p>10 A. As I said a few minutes ago, 67 square</p> <p>11 inches per hen, at this point in time.</p> <p>12 Q. Is it your understanding that</p> <p>13 certification required a producer to have all</p> <p>14 laying facilities under its control compliant with</p> <p>15 that density requirement?</p> <p>16 MR. GREENE: Objection, lack of</p> <p>17 foundation, confusing and argumentative.</p> <p>18 A. I would say to you that I am not an</p> <p>19 attorney, but my understanding is there are about</p> <p>20 five different requirements that go with that.</p> <p>21 BY MR. MALKINSON:</p> <p>22 Q. Is the one I stated one of them?</p>	<p style="text-align: right;">105</p> <p>1 provided supply of eggs to Michael Foods become UEP</p> <p>2 compliant?</p> <p>3 A. Egg products, that's absolutely true.</p> <p>4 Q. You attended animal welfare committee</p> <p>5 meetings of the UEP, true?</p> <p>6 A. Yes.</p> <p>7 Q. And you did that regularly when they</p> <p>8 held them?</p> <p>9 MR. GREENE: Objection, vague.</p> <p>10 A. I wouldn't say that, but I did attend</p> <p>11 numerous of them, yes.</p> <p>12 BY MR. MALKINSON:</p> <p>13 Q. You were present during many of the</p> <p>14 discussions about the UEP certification program and</p> <p>15 its inception?</p> <p>16 A. Sure.</p> <p>17 Q. So you were present when the 100 percent</p> <p>18 compliant aspect of that certification was</p> <p>19 discussed there?</p> <p>20 A. Yes. Correct. I'm not sure I was</p> <p>21 present, but I am aware of that conversation, yes.</p> <p>22 Q. And what's your understanding of that</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

28 (Pages 106 to 109)

<p style="text-align: right;">106</p> <p>1 requirement?</p> <p>2 A. That would be left to an attorney. I'm</p> <p>3 not going to answer that.</p> <p>4 Q. Well, as a member of the committee, you</p> <p>5 understood what they were talking about, true?</p> <p>6 A. I was never a member of the committee.</p> <p>7 Q. As a person in the egg industry who's</p> <p>8 also a producer, you were present during that</p> <p>9 committee meeting?</p> <p>10 A. Not always.</p> <p>11 Q. You know Ken Klippen, true?</p> <p>12 A. I do.</p> <p>13 Q. Am I correct that you were one of the</p> <p>14 principal members of a group that he was involved</p> <p>15 with that came up with an alternative proposed</p> <p>16 program to the UEP certification?</p> <p>17 A. I was a member of the PVP program, yes.</p> <p>18 Q. And that was Ken Klippen's program?</p> <p>19 A. Yes.</p> <p>20 Q. Am I correct that the 100 percent</p> <p>21 compliance requirement of a producer's facilities</p> <p>22 was a key element of opposition that the Ken</p>	<p style="text-align: right;">108</p> <p>1 Q. Were you a member of the group that is</p> <p>2 described in this memo, regardless of whether you</p> <p>3 recognize the name at the top?</p> <p>4 A. I never received this memo.</p> <p>5 Q. Okay. That was going to be my next</p> <p>6 question.</p> <p>7 To your knowledge, are you a member of</p> <p>8 that group?</p> <p>9 MR. GREENE: Objection, lack of</p> <p>10 foundation.</p> <p>11 A. I'm sorry. I never received that.</p> <p>12 So --</p> <p>13 BY MR. MALKINSON:</p> <p>14 Q. I'm not asking if you received that</p> <p>15 particular memo. I'm asking if you were a member</p> <p>16 of Bob Sparboe's Animal Welfare Concerned Group.</p> <p>17 MR. GREENE: Same objection.</p> <p>18 A. We would have to define what we're</p> <p>19 talking about. I've never been to an Animal</p> <p>20 Welfare Concerned Group, called as such. I will</p> <p>21 stipulate that I was early on in the Klippen</p> <p>22 committee, if that makes it easier.</p>
<p style="text-align: right;">107</p> <p>1 Klippen group was trying to address?</p> <p>2 MR. GREENE: Objection, confusing.</p> <p>3 A. During the discussion regarding animal</p> <p>4 welfare programs, there was not universal agreement</p> <p>5 necessarily in the industry as to what was</p> <p>6 happening, and one of the alternatives that was</p> <p>7 discussed was the Klippen program.</p> <p>8 BY MR. MALKINSON:</p> <p>9 Q. What was your understanding of the</p> <p>10 difference between the two programs?</p> <p>11 A. I would have to go back and read it</p> <p>12 again to find out. I dropped out of that program</p> <p>13 at one period of time.</p> <p>14 Q. Do you know Bob Sparboe?</p> <p>15 A. I did, yes.</p> <p>16 (Henning Exhibit 10 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. MALKINSON:</p> <p>19 Q. So this is a letter from Bob Sparboe to</p> <p>20 what he calls the Animal Welfare Concerned Group.</p> <p>21 Were you ever a member of that group?</p> <p>22 A. I don't recall it being named that.</p>	<p style="text-align: right;">109</p> <p>1 BY MR. MALKINSON:</p> <p>2 Q. Did you or any of the companies that you</p> <p>3 were -- you had ownership interest in ever</p> <p>4 contribute money to the Klippen group or pay dues?</p> <p>5 A. Henning Family Farms made a contribution</p> <p>6 to the original exploratory group because at that</p> <p>7 point in time, understand Henning Construction</p> <p>8 Company has a myriad of customers involved in</p> <p>9 production, there was turmoil in the industry and</p> <p>10 nonagreement. And Henning Construction Company</p> <p>11 made an investment into the exploratory committee</p> <p>12 to see if there would be alternatives that would be</p> <p>13 helpful to our customers, et al.</p> <p>14 Q. Did the UEP certification program impact</p> <p>15 Henning Construction in any way?</p> <p>16 A. Certainly when it impacted our</p> <p>17 customers, it impacted us.</p> <p>18 Q. In your estimation, did the UEP</p> <p>19 certification program have a negative impact on</p> <p>20 Henning Construction?</p> <p>21 A. Certainly it put our customers in a</p> <p>22 turmoil as to what direction the industry was going</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

29 (Pages 110 to 113)

<p style="text-align: right;">110</p> <p>1 to take and whether to invest in X kind of systems.</p> <p>2 Q. What about in terms of revenue to the</p> <p>3 company?</p> <p>4 A. I can't speak specifically to that. It</p> <p>5 varies year to year in the construction business.</p> <p>6 Q. Were you ever involved in conference</p> <p>7 calls as part of the Ken Klippen effort in which</p> <p>8 gaining support from the USDA to the Klippen</p> <p>9 program was discussed?</p> <p>10 A. At any time? Probably yes. Specific</p> <p>11 times, I cannot answer.</p> <p>12 May I add to that?</p> <p>13 Q. I think you've answered the question.</p> <p>14 MR. GREENE: Objection. I think if the</p> <p>15 witness feels the need to add to an answer, I think</p> <p>16 the witness should be permitted to respond. But</p> <p>17 I'll --</p> <p>18 MR. MALKINSON: You can ask to follow</p> <p>19 up.</p> <p>20 (Henning Exhibit 11 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. MALKINSON:</p>	<p style="text-align: right;">112</p> <p>1 or two-day meeting with Ken Klippen taking place in</p> <p>2 Chicago?</p> <p>3 A. Not specifically, but it's probable.</p> <p>4 It's fine.</p> <p>5 Q. Did you meet in Chicago frequently on</p> <p>6 egg-related business?</p> <p>7 A. On many businesses.</p> <p>8 Q. With Ken Klippen?</p> <p>9 A. No.</p> <p>10 Q. Do you recall being at a meeting in</p> <p>11 Chicago in which he was trying to get consensus to</p> <p>12 form an association --</p> <p>13 A. Yes.</p> <p>14 Q. -- of producers?</p> <p>15 A. Yes. Yes. Not necessarily just</p> <p>16 producers, but the answer is yes.</p> <p>17 Q. Were there producers present at the</p> <p>18 meeting that you recall being a -- participating</p> <p>19 in?</p> <p>20 A. Yes.</p> <p>21 Q. And were some of those producers</p> <p>22 expressing any displeasure over the UEP's 100</p>
<p style="text-align: right;">111</p> <p>1 Q. You know what? I'm not going to ask you</p> <p>2 about it. I'll leave it marked. We'll just go on</p> <p>3 from there. It's not addressed to you. Have you</p> <p>4 ever seen that document, sir?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 (Henning Exhibit 12 was marked for</p> <p>8 identification.)</p> <p>9 MR. MALKINSON: Exhibit 11 is</p> <p>10 EGOE00529017. That was Exhibit 11. Exhibit 12 is</p> <p>11 UEO218113.</p> <p>12 BY MR. MALKINSON:</p> <p>13 Q. Mr. Henning, Exhibit 12 is a list of</p> <p>14 attendees at a meeting in Chicago in October of</p> <p>15 2006, and you're listed number 9, Henning</p> <p>16 Construction, Jeff Henning. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall being in Chicago for a Ken</p> <p>19 Klippen-related meeting at that time?</p> <p>20 A. Not specifically, but it's certainly</p> <p>21 possible.</p> <p>22 Q. Do you have any recollection of a one-</p>	<p style="text-align: right;">113</p> <p>1 percent rule?</p> <p>2 A. I attended a lot of meetings about this</p> <p>3 deal. I will only tell you that there was no</p> <p>4 consensus, in my opinion. And that's why there was</p> <p>5 other meetings, for people to figure out if there</p> <p>6 were alternatives. I must tell you the reason that</p> <p>7 I invested in this, I previously stated to you.</p> <p>8 Number two, I will tell you that my</p> <p>9 reason to staying interested in it was the PVP</p> <p>10 program was of great interest to me and some of our</p> <p>11 other processing businesses where we still today</p> <p>12 have implemented the PVP program in businesses that</p> <p>13 are not egg related. So the Klippen manual was a</p> <p>14 guideline for that particular -- those particular</p> <p>15 processes.</p> <p>16 Q. I may have asked you this earlier, but</p> <p>17 have any of the egg businesses that you have been</p> <p>18 involved in over the years, were any of them ever</p> <p>19 UEP-certified programs?</p> <p>20 A. At what point in time?</p> <p>21 Q. At any time.</p> <p>22 A. Yes.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

30 (Pages 114 to 117)

<p style="text-align: right;">114</p> <p>1 Q. Which ones and when?</p> <p>2 A. Trillium is now UEP certified.</p> <p>3 Q. What is the reason why you've had</p> <p>4 Trillium UEP certified?</p> <p>5 A. Customer requests.</p> <p>6 Q. What customer does Trillium provide egg</p> <p>7 products for?</p> <p>8 A. Understand Trillium provides egg</p> <p>9 products for the Waldbaum Company. MFI.</p> <p>10 Q. That's part of Michael Foods?</p> <p>11 A. The driver, however, was the shell egg</p> <p>12 portion of the business.</p> <p>13 Q. The driver of Trillium?</p> <p>14 A. Of UEP certification.</p> <p>15 Q. Does Trillium have laying hens?</p> <p>16 A. Yes.</p> <p>17 Q. Is Michael Foods the exclusive customer</p> <p>18 of all of your egg production businesses that</p> <p>19 you're affiliated with?</p> <p>20 A. No. Minor.</p> <p>21 Q. Have you ever read the Complaint in this</p> <p>22 case?</p>	<p style="text-align: right;">116</p> <p>1 A. Texas.</p> <p>2 Q. How big a facility?</p> <p>3 A. I have no earthly idea.</p> <p>4 Q. Do you know where in Texas?</p> <p>5 A. No earthly idea.</p> <p>6 Q. If I were to tell you that your Henning</p> <p>7 Construction website lists a Cal-Maine breaking</p> <p>8 plant in Gonzalez, Texas --</p> <p>9 A. That would probably be it. I want to</p> <p>10 tell you I have not been in the CEO's chair since</p> <p>11 2002 in that business.</p> <p>12 Q. What would be the capacity, in your</p> <p>13 estimation, of a 31,000-square-foot frame building?</p> <p>14 A. It is a breaking facility. It's the</p> <p>15 processing building from which eggs are either</p> <p>16 delivered from the outside or produced on site</p> <p>17 through that building.</p> <p>18 Q. Do you know what revenue was generated</p> <p>19 by that project?</p> <p>20 A. No idea.</p> <p>21 Q. Did you ever hear any representatives of</p> <p>22 egg producers expressing displeasure with the UEP's</p>
<p style="text-align: right;">115</p> <p>1 A. No.</p> <p>2 Q. Henning Construction has done work for</p> <p>3 Cal-Maine, true?</p> <p>4 A. Yes.</p> <p>5 Q. Can you describe what it's done for</p> <p>6 them?</p> <p>7 A. Primarily processing, egg processing</p> <p>8 facilities.</p> <p>9 Q. And when you say "processing," do you</p> <p>10 mean developing an outside contractor to provide</p> <p>11 Cal-Maine with eggs or egg products?</p> <p>12 A. No. Construction. You asked about</p> <p>13 Henning Construction Company.</p> <p>14 Q. Yes.</p> <p>15 A. And I'm answering Henning Construction</p> <p>16 Company.</p> <p>17 Q. So what you're saying is that you've</p> <p>18 constructed egg agricultural facilities for</p> <p>19 Cal-Maine?</p> <p>20 A. For the breaking and grading the side of</p> <p>21 their business.</p> <p>22 Q. Where were those done?</p>	<p style="text-align: right;">117</p> <p>1 100 percent rule?</p> <p>2 A. I believe that that's bantered and</p> <p>3 discussed then and now.</p> <p>4 Q. Is that a yes?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever hear any UEP producer</p> <p>7 representatives discussing bird reduction as a</p> <p>8 result of laying hen density requirements?</p> <p>9 A. Never.</p> <p>10 Q. At any of the UEP animal welfare</p> <p>11 committee meetings that you attended, did anyone</p> <p>12 ever discuss bird reduction?</p> <p>13 MR. GREENE: Objection, vague.</p> <p>14 A. My answer would be that the concern that</p> <p>15 would come out of the discussions that involved any</p> <p>16 construction company would be if there's a cage</p> <p>17 density change, there's going to be a reduction in</p> <p>18 throughput in birds in buildings, and people are</p> <p>19 going to have to invest capital in it, and is that</p> <p>20 going to effect me down the road if they don't have</p> <p>21 enough capital to keep building.</p> <p>22 BY MR. MALKINSON:</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

31 (Pages 118 to 121)

<p style="text-align: right;">118</p> <p>1 Q. Okay. But the question I asked you was</p> <p>2 whether you heard any UEP producer representatives</p> <p>3 at UEP meetings discussing bird reduction as -- in</p> <p>4 the context of laying hen density in the egg</p> <p>5 industry.</p> <p>6 MR. GREENE: Objection, confusing.</p> <p>7 A. Without getting thrown out of the room,</p> <p>8 I'd say asked and answered. I already told you</p> <p>9 what I told you in the time before.</p> <p>10 BY MR. MALKINSON:</p> <p>11 Q. Well, tell me again, because I --</p> <p>12 A. Read it, please, then.</p> <p>13 Q. Sir, I'm going to have the question read</p> <p>14 back to you, and I'd just look for an answer.</p> <p>15 A. Read the answer, please, from the</p> <p>16 previous question. That's my answer.</p> <p>17 Q. Are you going to refuse to answer the</p> <p>18 question?</p> <p>19 A. I have answered it as best I can.</p> <p>20 Q. You have not answered the question.</p> <p>21 MR. GREENE: Objection, argumentative.</p> <p>22 A. I have no answer for that question, sir.</p>	<p style="text-align: right;">120</p> <p>1 That's all I'm asking.</p> <p>2 A. It's not a yes or no question. So if</p> <p>3 that's how I have to answer it, I have no answer.</p> <p>4 Q. Did you hear anyone talk about bird</p> <p>5 reduction in the context of laying hen density at</p> <p>6 any of the UEP meetings you went to? You either</p> <p>7 did hear it or you didn't, sir. That's all I'm</p> <p>8 asking.</p> <p>9 A. I never --</p> <p>10 MR. GREENE: Objection, argumentative.</p> <p>11 A. I have no answer, sir.</p> <p>12 BY MR. MALKINSON:</p> <p>13 Q. You have no answer? You don't know? Or</p> <p>14 you're declining to answer?</p> <p>15 A. I don't know. That will be my answer.</p> <p>16 Q. Did you ever hear that discussed at any</p> <p>17 Ken Klippen group meeting, conference or</p> <p>18 discussion?</p> <p>19 MR. GREENE: Objection, vague.</p> <p>20 A. No, I did not. That was never an</p> <p>21 objective of that committee in any meeting where I</p> <p>22 was there.</p>
<p style="text-align: right;">119</p> <p>1 BY MR. MALKINSON:</p> <p>2 Q. Is it your testimony that you never</p> <p>3 heard bird reduction discussed in the context of</p> <p>4 laying hen density at any UEP meetings?</p> <p>5 MR. GREENE: Objection.</p> <p>6 A. I was not on the executive committee.</p> <p>7 The executive committee made the decisions they</p> <p>8 made regarding the subject matter after many</p> <p>9 meetings of all sorts of discussions, none of which</p> <p>10 I heard were doing this to change bird numbers. It</p> <p>11 was about animal welfare.</p> <p>12 BY MR. MALKINSON:</p> <p>13 Q. Okay. So it's your testimony that you</p> <p>14 never heard any of them talking about bird</p> <p>15 reduction in the context of laying hen density in</p> <p>16 the egg industry?</p> <p>17 A. I would go on to tell you that when</p> <p>18 you --</p> <p>19 Q. Sir, it's a yes or no question. Did you</p> <p>20 hear them --</p> <p>21 A. No, it's not.</p> <p>22 Q. Did you hear them say it or did you not?</p>	<p style="text-align: right;">121</p> <p>1 Q. What wasn't an objective?</p> <p>2 A. A reduction in -- I heard the reduction</p> <p>3 in density discussion, but I didn't hear about a</p> <p>4 reduction in numbers. That was never the</p> <p>5 objective. The question was what alternatives are</p> <p>6 there and can there be an alternative program put</p> <p>7 together.</p> <p>8 Q. Did you ever agree after the -- at or</p> <p>9 after the October 2006 meeting in Chicago to be a</p> <p>10 member of a committee for Ken Klippen with someone</p> <p>11 from Sparboe and Ron Krieder and Toby Catherman?</p> <p>12 A. I may have.</p> <p>13 Q. You don't recall one way or the other?</p> <p>14 A. No, I really don't definitively.</p> <p>15 Q. Do you know what the capacity of Michael</p> <p>16 Foods' own laying facilities were in the 2000s,</p> <p>17 approximately?</p> <p>18 A. Well, they were changing because of</p> <p>19 construction. But I would have guessed in the</p> <p>20 14 million bird range. 13-something to 14.</p> <p>21 Q. And then on top of that, they would have</p> <p>22 had, for example, whatever was being produced from</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

32 (Pages 122 to 125)

<p style="text-align: right;">122</p> <p>1 the companies you described earlier?</p> <p>2 MR. GREENE: Objection to the</p> <p>3 characterization of "on top of that."</p> <p>4 A. It would have been contract reduction</p> <p>5 owned by other people.</p> <p>6 BY MR. MALKINSON:</p> <p>7 Q. Was it your understanding that Michael</p> <p>8 Foods used contract egg producers such as the</p> <p>9 companies that you testified to this morning that</p> <p>10 you have ownership interest in, companies other</p> <p>11 than yours, over the years?</p> <p>12 A. Yes.</p> <p>13 Q. Was Daybreak one of them?</p> <p>14 A. I'm not sure I'm at liberty to discuss</p> <p>15 that process.</p> <p>16 Q. Well, you've signed a protective order</p> <p>17 in the case. I'm just asking a straightforward --</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did you ever hear any discussion</p> <p>20 at UEP meetings about the egg industry making a</p> <p>21 good effort in meeting the price and discovery</p> <p>22 committee meetings' recommendation of reducing the</p>	<p style="text-align: right;">124</p> <p>1 committees and other things, allieds, et cetera,</p> <p>2 and then the final day, there's a master board</p> <p>3 meeting to wrap up the meeting.</p> <p>4 And I've never been on the board, so</p> <p>5 I've not been in those meetings.</p> <p>6 Q. So it's your testimony that you've not</p> <p>7 gone to the board meetings, the board aspect of the</p> <p>8 meeting?</p> <p>9 A. I may have gone to the closing board</p> <p>10 meeting a third of the time.</p> <p>11 Q. You would have been welcomed if you</p> <p>12 wanted to go in? Those were free to be -- people</p> <p>13 could sit in them --</p> <p>14 MR. GREENE: Objection.</p> <p>15 BY MR. MALKINSON:</p> <p>16 Q. -- who were there?</p> <p>17 A. There was -- are you talk- -- what</p> <p>18 period of time?</p> <p>19 Q. Early -- like 2000.</p> <p>20 A. Probably.</p> <p>21 Q. The various committees would give a</p> <p>22 report as part of the meeting?</p>
<p style="text-align: right;">123</p> <p>1 chick hatch?</p> <p>2 MR. GREENE: Objection, confusing. Lack</p> <p>3 of foundation.</p> <p>4 A. My answer would still be no, though.</p> <p>5 BY MR. MALKINSON:</p> <p>6 Q. In the early 2000s when you would go to</p> <p>7 a UEP meeting, I want to just ask you a little bit</p> <p>8 about how they were organized. Was it initially a</p> <p>9 board meeting and then separate side meetings of</p> <p>10 different committees or how was it?</p> <p>11 A. There would be -- my recollection is</p> <p>12 there was a pre-board meeting for the executive</p> <p>13 committee. There's an executive committee, there's</p> <p>14 a board and then there's the constituents, whether</p> <p>15 they be allied or producers. And you are allowed</p> <p>16 in or out of various meetings, whether you were a</p> <p>17 producer or an allied, et cetera.</p> <p>18 But my general sense is that -- and</p> <p>19 understanding is that there's an executive meeting</p> <p>20 and -- possibly the day before, and a board meeting</p> <p>21 possibly early the first day, and then lots of</p> <p>22 breakout sessions the second day and third day for</p>	<p style="text-align: right;">125</p> <p>1 A. Yes.</p> <p>2 Q. And was that something that was</p> <p>3 typically rendered when other guests or</p> <p>4 participants in the conference were present? In</p> <p>5 other words, it wasn't just within that committee?</p> <p>6 MR. GREENE: Objection, confusing.</p> <p>7 A. The committee meetings would battle out</p> <p>8 whatever objectives they were supposed to have</p> <p>9 been, if they could, and then present a report to</p> <p>10 the board with motions for action if they got that</p> <p>11 far.</p> <p>12 BY MR. MALKINSON:</p> <p>13 Q. And if you were -- and you have, from</p> <p>14 time to time, sat in on board meetings and heard</p> <p>15 the various committee reports being rendered at</p> <p>16 that time?</p> <p>17 A. Yes.</p> <p>18 Q. The fact that you were present at an</p> <p>19 annual board meeting, does that indicate to you</p> <p>20 that you would have heard the reports of the</p> <p>21 committees at that meeting?</p> <p>22 A. Not necessarily.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

33 (Pages 126 to 129)

<p style="text-align: right;">126</p> <p>1 Q. Did you ever participate in Ken 2 Klippen's discussions with the USDA about the USDA 3 potentially endorsing his program? 4 A. I believe I sat in on a presentation 5 when the USDA was in a meeting to explain what the 6 PVP program was. 7 Q. Were you a -- strike that. 8 Were you the chairman of Ken Klippen's 9 committee on the Processed Verified Program? 10 A. I may have been. I was very active in 11 that. As I say, I had numerous interests there. 12 (Henning Exhibit 13 was marked for 13 identification.) 14 BY MR. MALKINSON: 15 Q. Mr. Henning, I've shown you what's been 16 marked as Henning Exhibit 13. It starts with Bates 17 Number FMI0037477. Let me know when you're 18 finished looking at it, sir. 19 A. Yes, sir. I've gone through it. 20 Q. This is a summary of a Ken 21 Klippen -- strike that. 22 This document is titled at the top</p>	<p style="text-align: right;">128</p> <p>1 (Henning Exhibit 14 was marked for 2 identification.) 3 BY MR. MALKINSON: 4 Q. Mr. Henning, I'm showing you what's been 5 marked as Henning Exhibit 14. Bates Number 6 UE0296624. 7 A. Yes. I see it. 8 Q. This is a set of minutes from a UEP 9 annual board meeting in October of 2000. I will 10 state for the record that the -- there was a little 11 highlighting that's different from the original. 12 It's generated by me. I've got your name -- you 13 see that? -- highlighted on the first page. 14 A. Yes, sir. 15 MR. GREENE: So the highlighting is not 16 part of the document as it was produced; is that 17 correct? 18 MR. MALKINSON: Correct. That's 19 correct. 20 BY MR. MALKINSON: 21 Q. As even an -- I don't want to interrupt 22 you while you're reading it, sir. Let me know when</p>
<p style="text-align: right;">127</p> <p>1 "Klippen Animal Welfare Guidelines (Processed 2 Verified Program)" with a date of January 4th 2007. 3 And in the middle, it lists you as chair of the 4 committee. Do you see that? 5 A. Yes, sir. 6 Q. Have you seen this document before? 7 A. I'm sure I have. 8 Q. And the companies listed at the top, 9 those are companies that were, at the time this was 10 rendered, interested in Ken Klippen's program, the 11 alternative to the UEP? 12 A. I wouldn't say that, sir. I would say 13 that they were interested in the -- hearing more 14 about learning about the PVP program. 15 Q. Did any of those companies contribute 16 money to finance Ken Klippen's efforts in this 17 regard? 18 A. Henning Construction did, I can tell you 19 that. 20 Q. Do you know if any of the others paid 21 money? 22 A. Not specifically, no, I don't.</p>	<p style="text-align: right;">129</p> <p>1 you're finished. 2 A. I'm okay. Go ahead. 3 Q. As an allied member of the UEP, you 4 would receive minutes after their meetings? 5 A. No, sir. 6 Q. Did you ever review minutes of their 7 meetings? 8 A. No, sir. 9 Q. On the third page of this exhibit that 10 has Bates Number UE0296626, there's a highlighted 11 sentence that says, and I'll read it, "In regard to 12 supply demand, Baker reported that the industry had 13 made a good effort in meeting the committee's 14 recommendation of reducing the chick hatch." Do 15 you recall that report being made? 16 A. No, I do not. 17 Q. The next sentence says, and I quote, 18 "Layer numbers still exceed last year's inventory 19 by 5 million hens and that further hen reduction 20 was needed to return to profitable prices." Do you 21 see that sentence? 22 A. Yes, sir.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

34 (Pages 130 to 133)

<p style="text-align: right;">130</p> <p>1 Q. Do you recall that report being made?</p> <p>2 A. No, I do not.</p> <p>3 Q. Did you ever hear anyone at that</p> <p>4 committee meeting discussing anything along the</p> <p>5 lines of the content of those two sentences that we</p> <p>6 just went over?</p> <p>7 A. No, I can't recall. It's not uncommon</p> <p>8 since the beginning of time for everyone to</p> <p>9 understand the chick hatch reports and understand</p> <p>10 what that's going to do to the industry when we</p> <p>11 have more supply than we do demand. And so ever</p> <p>12 since I've been in the business, you know, people</p> <p>13 needed to figure out if they needed to store some</p> <p>14 nuts away because the times could get difficult for</p> <p>15 a while when the hatch was high. And so I</p> <p>16 personally don't see -- wouldn't pay much attention</p> <p>17 to that fodder because it goes on forever.</p> <p>18 Q. Are you saying that among producers,</p> <p>19 over the years, there has been discussion about</p> <p>20 reducing -- about -- strike that.</p> <p>21 Are you saying that over the years,</p> <p>22 there has been discussion among producers, to your</p>	<p style="text-align: right;">132</p> <p>1 discussions along those lines?</p> <p>2 A. No.</p> <p>3 Q. I take it you don't have any reason to</p> <p>4 believe you were not in attendance at the UEP</p> <p>5 meeting in the year 2000 that's reflected on</p> <p>6 Exhibit 14?</p> <p>7 A. No. I was in Ponte Vedra. But you must</p> <p>8 understand that hundreds of my customers were</p> <p>9 there, and there are many, many side meetings that</p> <p>10 take place. So I probably listened to the animal</p> <p>11 welfare committee. I probably listened to this and</p> <p>12 that and the next thing. But I'm in and out of</p> <p>13 those meetings and side meetings all the time. But</p> <p>14 I don't dispute that I was there.</p> <p>15 Q. During your involvement with the Klippen</p> <p>16 program, were you -- did you ever become aware of</p> <p>17 the UEP making any efforts to defeat or counter the</p> <p>18 Klippen effort?</p> <p>19 MR. GREENE: Objection, lack of</p> <p>20 foundation.</p> <p>21 A. I believe that UEP would like to have</p> <p>22 had unanimity, as any organization, within all of</p>
<p style="text-align: right;">131</p> <p>1 knowledge, about hen reduction being needed to</p> <p>2 improve pricing?</p> <p>3 A. No, I won't say that. No, I would not</p> <p>4 say that. I would only say to you that the</p> <p>5 government has produced statistic on chick hatch,</p> <p>6 and you watch the chick numbers and chick prices,</p> <p>7 and I think everybody can put two and two together</p> <p>8 on that subject matter.</p> <p>9 Q. And by that, you mean that if the supply</p> <p>10 is lower, the price goes up?</p> <p>11 MR. GREENE: Object to the</p> <p>12 characterization.</p> <p>13 A. My point was if the chick hatch is too</p> <p>14 high, then we're likely to have lower prices and</p> <p>15 people are going to have to be able to suffer</p> <p>16 through that to see another day.</p> <p>17 BY MR. MALKINSON:</p> <p>18 Q. Is that the type of discussion that</p> <p>19 would sometimes take place at UEP meetings that you</p> <p>20 were at?</p> <p>21 A. No. Not to my knowledge.</p> <p>22 Q. Did you ever hear any producers having</p>	<p style="text-align: right;">133</p> <p>1 their members. So certainly I was aware that it</p> <p>2 wasn't the most popular discussion on earth. But</p> <p>3 also believe that it's important that you hear all</p> <p>4 sides of a discussion and see what alternatives</p> <p>5 could be there.</p> <p>6 I would give you an example that the</p> <p>7 industry thought about banding together and</p> <p>8 building a new hatchery because we only had one</p> <p>9 genetics company in the entire industry. So some</p> <p>10 people thought that would be smart. I went to a</p> <p>11 meeting and listened. So I go to lots of meetings</p> <p>12 to listen.</p> <p>13 BY MR. MALKINSON:</p> <p>14 Q. Based on your involvement in the Klippen</p> <p>15 program, what is your understanding of the main</p> <p>16 difference between that program and the</p> <p>17 UEP-certified program?</p> <p>18 A. A point of contention at that point in</p> <p>19 time, one of the points, was an absolute 67 square</p> <p>20 inches versus a range.</p> <p>21 Q. Excuse me. 67 square inches in terms of</p> <p>22 hen density?</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

35 (Pages 134 to 137)

<p style="text-align: right;">134</p> <p>1 A. Per hen, yes. So one of the 2 alternatives was some range there as opposed to an 3 absolute. The other discussion was a hundred 4 percent versus an alternative to that. 5 Q. And the hundred percent meaning what? 6 A. Of participation. If you did one farm, 7 you did all farms under that same ownership. 8 Q. Was it your understanding that the 100 9 percent participation excluded any egg products 10 that came from contract suppliers? 11 MR. GREENE: Objection, confusing. 12 A. My answer would be it was my 13 understanding it was a hundred percent of the 14 ownership group. 15 BY MR. MALKINSON: 16 Q. So just to extrapolate, to use an 17 example, for Michael Foods, if one were to assess 18 with it whether they were or were not 100 percent 19 compliant, assuming that the density all fit the 20 program for purposes of my question, if Michael 21 Foods was receiving egg products from a company 22 such as one of the ones you had ownership in, which</p>	<p style="text-align: right;">136</p> <p>1 differences between the programs. Like I say, they 2 were many pages long. And so there were nuances 3 that some of the constituents were interested, and 4 that's it. 5 (Henning Exhibit 15 was marked for 6 identification.) 7 BY MR. MALKINSON: 8 Q. Mr. Henning, I'm showing you an e-mail 9 we've marked -- a series of e-mails marked 10 Exhibit 15, and it begins with Bates Number 11 MFI0064431. This is an e-mail from Ken Klippen 12 addressed to you and some other folks back in 13 February 2000 [sic], true? 14 A. Yes. 15 Q. For how long were you involved in the 16 Klippen program in terms of working with him on his 17 committees? 18 A. Sir, I don't know. I think until it 19 lost interest and didn't move forward with enough 20 constituency to give it legs. 21 Q. Page 2 of this exhibit has a line called 22 "Budget." Do you see that?</p>
<p style="text-align: right;">135</p> <p>1 was not within the UEP density guidelines, it's 2 your understanding that that would not impact 3 Michael Foods' own UEP certification because your 4 company wasn't owned by Michael Foods; is that what 5 you're saying? 6 MR. GREENE: Objection, confusing. 7 A. I will only say to you that I am not an 8 attorney, so I can't answer that legally. I will 9 tell you that -- 10 BY MR. MALKINSON: 11 Q. I understand you are not a lawyer. I'm 12 just asking you what your impression was at that 13 point. 14 A. My impression was that if we needed to 15 fall underneath that program, that contractually we 16 would sit down and figure that out in terms of an 17 impact to the organizations I was in. 18 Q. So you don't know? 19 A. That's a good answer, sir. 20 Q. Were there any other key differences in 21 the two programs that you recall? 22 A. There were -- yeah, there were</p>	<p style="text-align: right;">137</p> <p>1 A. Yes, sir. 2 Q. And it says, "Here is a list of 3 companies that are currently funding my efforts." 4 And it lists several companies. 5 Does that refresh your recollection as 6 to whether or not any of those companies were 7 funding Mr. Klippen's alternative program efforts 8 at that time? 9 MR. GREENE: Objection, lack of 10 foundation. 11 A. All I can say is what I read. I know 12 what we paid. I don't know whether all the rest of 13 them paid all the time or not. 14 BY MR. MALKINSON: 15 Q. Do you have any reason to doubt the 16 statement here that these companies listed are 17 currently funding his efforts? 18 A. No. I probably don't doubt that. 19 Q. What is the Henning Poultry Conference, 20 if you know? 21 A. I have no idea. 22 Q. To your knowledge, did Henning</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

36 (Pages 138 to 141)

<p style="text-align: right;">138</p> <p>1 Construction or any of its affiliated companies</p> <p>2 traditionally invite people to dinner following</p> <p>3 some of the UEP meetings?</p> <p>4 A. We always take customers out.</p> <p>5 Q. That would include some of the</p> <p>6 producers?</p> <p>7 A. They are our customers.</p> <p>8 Q. So that would include Michael Foods?</p> <p>9 A. Sure.</p> <p>10 Q. At any of those -- did you participate</p> <p>11 in some of those?</p> <p>12 A. Yes.</p> <p>13 Q. And was hen density ever discussed</p> <p>14 during those get-togethers?</p> <p>15 A. Oh, boy. I can't answer that, sir.</p> <p>16 We've had a lot of different meetings, and I have</p> <p>17 no idea. In the context of our contracts, if they</p> <p>18 were going to change hen density, there could have</p> <p>19 been a discussion at one point in time, but it</p> <p>20 never occurred.</p> <p>21 Q. Did any producer ever ask you in your</p> <p>22 capacity with Henning Construction to create</p>	<p style="text-align: right;">140</p> <p>1 Q. Were you involved in the construction of</p> <p>2 some of those?</p> <p>3 A. Yes.</p> <p>4 Q. Are you familiar at all with Michael</p> <p>5 Foods' laying hen business practices in terms of</p> <p>6 whether or not they undertake to reduce the size of</p> <p>7 their flock at any time?</p> <p>8 MR. GREENE: Objection, confusing.</p> <p>9 A. I know that they switched to the</p> <p>10 UEP-compliant density.</p> <p>11 BY MR. MALKINSON:</p> <p>12 Q. And in terms of any reduction in</p> <p>13 their -- in the number of laying hens, is that the</p> <p>14 only item of business practice of theirs that you</p> <p>15 know that would fit that category?</p> <p>16 MR. GREENE: Objection.</p> <p>17 BY MR. MALKINSON:</p> <p>18 Q. In other words, you're not aware of them</p> <p>19 killing off parts of their flock purposely or</p> <p>20 anything like that; all you know about is the</p> <p>21 density?</p> <p>22 A. Well, in answer to the first question, I</p>
<p style="text-align: right;">139</p> <p>1 facilities that were UEP compliant in terms of</p> <p>2 density?</p> <p>3 A. Yes.</p> <p>4 Q. Which producers did that?</p> <p>5 A. I would have to go through a list, and</p> <p>6 that would require some research.</p> <p>7 Q. What would you be looking at to research</p> <p>8 it? Contracts?</p> <p>9 A. The list of customers and facilities.</p> <p>10 Q. Are there any that come to mind right</p> <p>11 now that you know you created UEP-qualified density</p> <p>12 laying facilities for?</p> <p>13 A. Daybreak. I'm guessing Rose Acres</p> <p>14 possibly. I can't -- that would be a guess. It's</p> <p>15 been a while since we built production facilities</p> <p>16 for them. Minor producers. I can't put names on</p> <p>17 those for you at this point in time.</p> <p>18 Q. Are you familiar at all with the laying</p> <p>19 hen densities at Michael Foods' own facilities?</p> <p>20 A. Yes.</p> <p>21 Q. Are any of them UEP compliant?</p> <p>22 A. To my knowledge, they all are.</p>	<p style="text-align: right;">141</p> <p>1 know they made the density reduction. I know that</p> <p>2 they had ordered additional buildings from us</p> <p>3 because of the lack of throughput that happened in</p> <p>4 certain of their facilities when that happened. As</p> <p>5 far as --</p> <p>6 Q. What do you mean by that, just so I -- I</p> <p>7 don't know what you mean by "throughput."</p> <p>8 A. Well, you have a breaking plant that's</p> <p>9 built for 4 million birds. So you take out X</p> <p>10 number of birds, and you're inefficient inside that</p> <p>11 plant, so you have to add production facilities, so</p> <p>12 they keep the efficiency of that plant up.</p> <p>13 Q. Is it your testimony that Michael's</p> <p>14 added onto their laying facilities to accommodate</p> <p>15 the increased -- the decrease in density from the</p> <p>16 UEP certification?</p> <p>17 A. Well, I would say to you they don't have</p> <p>18 the density they had before, but certainly they had</p> <p>19 to add back and replace certain facilities in order</p> <p>20 to -- and when they did that, they increased the</p> <p>21 bird throughput so that the fixed-cost breaking</p> <p>22 facilities and processing facilities were better</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

37 (Pages 142 to 145)

<p style="text-align: right;">142</p> <p>1 utilized.</p> <p>2 Q. Did they add back facilities so that</p> <p>3 they had the same number of laying hens?</p> <p>4 MR. GREENE: Objection, lack of</p> <p>5 foundation.</p> <p>6 BY MR. MALKINSON:</p> <p>7 Q. If you know.</p> <p>8 A. I know they do not have the same number</p> <p>9 of hens at each location that they had pre -- to my</p> <p>10 knowledge, pre their change in density.</p> <p>11 Q. Okay. And just so that we're clear, so</p> <p>12 once they became UEP compliant and had the UEP</p> <p>13 certification, from that point on, they did not</p> <p>14 have the same -- they had a lesser number of laying</p> <p>15 hens than they did previously?</p> <p>16 MR. GREENE: Objection, lack of</p> <p>17 foundation.</p> <p>18 BY MR. MALKINSON:</p> <p>19 Q. To your knowledge.</p> <p>20 A. To my knowledge, that is true.</p> <p>21 Mathematically, it would have to be.</p> <p>22 Q. Is Cindy Henning your wife?</p>	<p style="text-align: right;">144</p> <p>1 Q. And what were the reasons being fostered</p> <p>2 for those who wanted to backfill?</p> <p>3 A. I will give you an example. There is a</p> <p>4 waiver allowed in the program for natural</p> <p>5 disasters. Trillium had a natural disaster last</p> <p>6 August and lost a million birds, and they got a</p> <p>7 waiver to be able to backfill for an economic</p> <p>8 hardship.</p> <p>9 Q. To your knowledge, during the years</p> <p>10 after the UEP certification program came into</p> <p>11 effect, did the national inventory of laying hens</p> <p>12 go down?</p> <p>13 MR. GREENE: Objection, lack of</p> <p>14 foundation.</p> <p>15 A. Certainly it has varied up and down.</p> <p>16 Now it's the highest it has ever been in history.</p> <p>17 BY MR. MALKINSON:</p> <p>18 Q. That's as of when?</p> <p>19 A. Today.</p> <p>20 Q. What about in the years 2003 through</p> <p>21 2008?</p> <p>22 A. I can't answer that, sir. Sorry.</p>
<p style="text-align: right;">143</p> <p>1 A. Yes.</p> <p>2 Q. You and your wife would sometimes go on</p> <p>3 UEP golf events, golf outings, true?</p> <p>4 A. UEP -- as a part of a UEP function, yes.</p> <p>5 Q. To your knowledge, did the UEP encourage</p> <p>6 a limitation on backfilling?</p> <p>7 A. That's a part of their program, as I</p> <p>8 understand it, yes.</p> <p>9 Q. Did you ever hear any producers discuss</p> <p>10 displeasure with that?</p> <p>11 A. There's controversy on every rule that's</p> <p>12 made.</p> <p>13 Q. So that means yes?</p> <p>14 A. Yes.</p> <p>15 Q. And what was the displeasure on that</p> <p>16 that you recall?</p> <p>17 A. The animal welfare issues, socialization</p> <p>18 of older birds put back in with birds that weren't</p> <p>19 raised with them.</p> <p>20 Q. So that -- you recall that being the</p> <p>21 reason for limiting the backfilling?</p> <p>22 A. I believe so, yes.</p>	<p style="text-align: right;">145</p> <p>1 Q. Do you have Henning Exhibit Number 6 in</p> <p>2 front of you?</p> <p>3 MR. GREENE: Which one is Number 6?</p> <p>4 MR. MALKINSON: United Voices. Maybe I</p> <p>5 have it. Let's see.</p> <p>6 THE WITNESS: I think you have it.</p> <p>7 Yeah.</p> <p>8 MR. GREENE: I have it marked as 7. Do</p> <p>9 I have it incorrectly marked?</p> <p>10 MR. MALKINSON: No. Actually, you're</p> <p>11 correct. I have it at 6. You're showing 7?</p> <p>12 BY MR. MALKINSON:</p> <p>13 Q. Sir, you were previously showed the</p> <p>14 United Voices issue in reference to the project in</p> <p>15 Ohio that was reported there on the first page.</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did that -- to this day, has that</p> <p>18 project ever come to fruition in any form?</p> <p>19 A. No, it has not. I relinquished the</p> <p>20 permits in exchange for the operating permit for</p> <p>21 Trillium.</p> <p>22 Q. And so was there a separate supply</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

38 (Pages 146 to 149)

<p style="text-align: right;">146</p> <p>1 agreement with Michael Foods then entered into with 2 Trillium?</p> <p>3 A. Yes.</p> <p>4 Q. And was Trillium formulated for the 5 purpose of engaging in that supply agreement?</p> <p>6 A. No.</p> <p>7 Q. It existed before that?</p> <p>8 A. As a shell egg producer, it did, yes.</p> <p>9 Q. And as part of the supply agreement, did 10 it also become a liquid egg producer?</p> <p>11 A. Four and a half million birds did.</p> <p>12 Q. I take it, then, that that became the 13 substitute for -- well -- strike that.</p> <p>14 Where is that facility located?</p> <p>15 A. In Ohio.</p> <p>16 Q. Did that become the substitute for 17 the -- I'm going to use the wrong -- the acronym, 18 the IPRO II project that took its place when that 19 one didn't come to fruition?</p> <p>20 A. That -- well, I don't know if you use 21 the word "substitute." We entered into a contract 22 with Michael's and naturally negated the IPRO</p>	<p style="text-align: right;">148</p> <p>1 reported the layer flock inventory of 283.7 million 2 hens on November 1st, down 4.8 million hens from 3 the same date a year ago." Do you have any reason 4 to disagree with that?</p> <p>5 A. No, sir.</p> <p>6 Q. In your meetings with Mr. Greene, did 7 you review any documents?</p> <p>8 A. Only the exhibits that he produced.</p> <p>9 Q. The ones he produced during your 10 testimony?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And so during your meetings, he advised 13 you as to the nature of what he was going to be 14 asking you about?</p> <p>15 A. Generally, yes, sir.</p> <p>16 Q. And he told you about what a deposition 17 involved and that sort of thing?</p> <p>18 A. Yes.</p> <p>19 Q. The formality of it?</p> <p>20 A. Yes.</p> <p>21 Q. So that his description at the beginning 22 of today, you had heard all that from him before,</p>
<p style="text-align: right;">147</p> <p>1 contract.</p> <p>2 Q. Okay. So when it became evident that 3 the IPRO project wasn't going to work out, the 4 Trillium project was entered into at that point?</p> <p>5 A. A series of economic events to a 6 producer in the industry caused the Trillium 7 project to become available. I had the only 8 authorized operating permit in Ohio, and we were 9 asked to come in and take over that operation.</p> <p>10 Q. Okay. And you had that permit because 11 you had applied for it under IPRO?</p> <p>12 A. IPRO, correct.</p> <p>13 Q. Is there an IPRO I? What's the Roman 14 numeral II?</p> <p>15 A. We were originally looking in Iowa, 16 incorporated in Iowa, and we reincorporated IPRO II 17 when the objective changed.</p> <p>18 Q. Okay. But it was all essentially the 19 same project?</p> <p>20 A. Yes, sir.</p> <p>21 Q. The same issue on page 2 under "Hen 22 Inventory and Hatch" says, and I quote, "USDA</p>	<p style="text-align: right;">149</p> <p>1 listen to the questions, answer yes or no, that 2 sort of thing?</p> <p>3 A. No, not necessarily. I've been in a 4 deposition before, so --</p> <p>5 Q. Okay.</p> <p>6 MR. GREENE: Are you just about done?</p> <p>7 MR. MALKINSON: I'm getting close. I'm 8 looking for one document.</p> <p>9 BY MR. MALKINSON:</p> <p>10 Q. When you would attend --</p> <p>11 A. Excuse me, sir. Is it all right if I 12 just --</p> <p>13 Q. Do you need those?</p> <p>14 A. I was just to trying to put the 15 originals back for him. Sorry.</p> <p>16 Q. We'll arrange them when we're done.</p> <p>17 When you would attend animal welfare 18 committee meetings at the UEP from time to time --</p> <p>19 A. Mm-hmm.</p> <p>20 Q. -- would there be other allied members 21 present sometimes sitting in on those meetings?</p> <p>22 A. Yes.</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

39 (Pages 150 to 153)

<p style="text-align: right;">150</p> <p>1 Q. In the early years, in particular 2000,</p> <p>2 2001, 2002, 2003, would allied members from time to</p> <p>3 time be asked their view or would sometimes speak</p> <p>4 up and participate in the discussions going on</p> <p>5 during the committee meeting?</p> <p>6 A. Yes.</p> <p>7 Q. And did you from time to time -- strike</p> <p>8 that.</p> <p>9 When you sat in on those meetings, you</p> <p>10 were doing it as a representative of Henning</p> <p>11 Construction?</p> <p>12 A. Yes.</p> <p>13 Q. Would I be correct in stating that you,</p> <p>14 from time to time, spoke up when you were in some</p> <p>15 of those meetings?</p> <p>16 A. Yes.</p> <p>17 Q. In your estimation, is there a segment</p> <p>18 of the UEP board membership that has respect for</p> <p>19 your knowledge in the industry?</p> <p>20 MR. GREENE: Objection, vague.</p> <p>21 A. I would hope so.</p> <p>22 BY MR. MALKINSON:</p>	<p style="text-align: right;">152</p> <p>1 relationship?</p> <p>2 A. Yes.</p> <p>3 Q. If you could look at Henning Exhibit 2.</p> <p>4 A. Yes, sir.</p> <p>5 Q. On page 8, the quantity, you were asked</p> <p>6 about this before, that the quantities of the</p> <p>7 contract, I think the question was phrased along</p> <p>8 the lines of ranged from 92,500,000 pounds in 2003</p> <p>9 to 142 million in 2010. Do you recall that?</p> <p>10 A. Yes.</p> <p>11 Q. The contract actually provides that it</p> <p>12 reached the 142 million dollar pound level in 2006,</p> <p>13 true?</p> <p>14 A. Yes.</p> <p>15 Q. So that for the five years starting 2006</p> <p>16 through 2010, it was the exact same number of</p> <p>17 pounds that were being contracted for by Michael</p> <p>18 Foods, true?</p> <p>19 A. Yes.</p> <p>20 Q. Hawkeye Pride does what?</p> <p>21 A. It's in the 3 million bird laying</p> <p>22 facility that was built for Primera Foods, is the</p>
<p style="text-align: right;">151</p> <p>1 Q. So that those committee meetings were,</p> <p>2 for lack of a better phrase, free discussions among</p> <p>3 the people present?</p> <p>4 A. Yes.</p> <p>5 Q. How many laying hens are within the</p> <p>6 ambit of all of the companies that you have an</p> <p>7 ownership interest in right now, the producing</p> <p>8 companies?</p> <p>9 A. 24 million, 25 million.</p> <p>10 Q. And as of 2008, can you estimate what</p> <p>11 that number would be, approximately?</p> <p>12 A. Half.</p> <p>13 Q. Half that -- around 12 million?</p> <p>14 A. That's a guess.</p> <p>15 Q. But that's your best estimate?</p> <p>16 A. Yes. Yeah.</p> <p>17 Q. The Fremont contract that was seven</p> <p>18 years and nine months in duration, was it</p> <p>19 ultimately extended? Has that been a continuing</p> <p>20 relationship with Michael Foods?</p> <p>21 A. Renegotiated.</p> <p>22 Q. But it's an ongoing business</p>	<p style="text-align: right;">153</p> <p>1 upstream market and transition to Michael's Foods</p> <p>2 post that.</p> <p>3 Q. Center Fresh, I think you told us who</p> <p>4 they produced for, but remind me.</p> <p>5 A. Michael's.</p> <p>6 Q. Okay. Cedar Valley?</p> <p>7 A. Sparboe and Michael's.</p> <p>8 Q. Is that an ongoing business relationship</p> <p>9 with each?</p> <p>10 A. Yes. And it's only 375,000 birds.</p> <p>11 Q. Meek's?</p> <p>12 A. Meek's is Michael's.</p> <p>13 Q. What does that produce?</p> <p>14 A. Nest-run breaking stock.</p> <p>15 Q. Sioux County Eggs?</p> <p>16 A. Sioux County Eggs produces nest-run</p> <p>17 breaking stock that is then broken at Center Fresh</p> <p>18 and marketed to Michael's.</p> <p>19 Q. Iowa Cage-Free?</p> <p>20 A. Iowa Cage-Free is a 600,000 bird aviary</p> <p>21 system that produces nest-run breaking stock for</p> <p>22 Michael's.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

40 (Pages 154 to 157)

<p style="text-align: right;">154</p> <p>1 Q. You described your ownership when</p> <p>2 Mr. Greene was asking you questions earlier. Was</p> <p>3 your ownership interest in any of these companies</p> <p>4 that you listed, the egg-producing companies you</p> <p>5 have an ownership interest in, ever greater than it</p> <p>6 is today?</p> <p>7 A. No.</p> <p>8 Q. Was Dan Gardner an employee of Michael</p> <p>9 Foods at any time?</p> <p>10 A. That's a technical question. I do know</p> <p>11 that he owned 50 percent of the company.</p> <p>12 Q. And he then became your partner in</p> <p>13 Fremont Farms; is that true?</p> <p>14 A. No. No, that's not true.</p> <p>15 Q. Did he work for Fremont Farms?</p> <p>16 A. No.</p> <p>17 MR. GREENE: John, are we wrapping up?</p> <p>18 MR. MALKINSON: I've just got to look at</p> <p>19 my notes.</p> <p>20 BY MR. MALKINSON:</p> <p>21 Q. Were you aware that Bob Sparboe</p> <p>22 expressed an opinion that the animal welfare</p>	<p style="text-align: right;">156</p> <p>1 Q. You never asked him how he voted on</p> <p>2 that?</p> <p>3 A. I'm sure he voted no. But as a</p> <p>4 committee member, it didn't make any difference.</p> <p>5 Q. Do you still go to committee meetings?</p> <p>6 A. Not very often.</p> <p>7 Q. As a member now, are you a member of any</p> <p>8 committees?</p> <p>9 A. Just the allied.</p> <p>10 Q. In connection with the UEP certification</p> <p>11 or the Klippen program, did you ever consult with</p> <p>12 legal counsel? And I'm excluding anything</p> <p>13 pertaining to today's deposition.</p> <p>14 A. No.</p> <p>15 Q. You've never heard that national bird</p> <p>16 reduction was an ultimate goal of the UEP</p> <p>17 certification?</p> <p>18 MR. GREENE: Objection, argumentative.</p> <p>19 BY MR. MALKINSON:</p> <p>20 Q. You've never heard that?</p> <p>21 A. Whatever I answered before, sir.</p> <p>22 Q. I don't think I asked it that way</p>
<p style="text-align: right;">155</p> <p>1 process had been, for lack of a better phrase,</p> <p>2 contaminated by a secondary goal of national bird</p> <p>3 reduction?</p> <p>4 MR. GREENE: Objection, lack of</p> <p>5 foundation.</p> <p>6 A. No, I really wasn't, sir.</p> <p>7 BY MR. MALKINSON:</p> <p>8 Q. Other than the animal welfare committee,</p> <p>9 what other committees -- well -- strike that.</p> <p>10 Were you ever a member of -- strike</p> <p>11 that.</p> <p>12 Other than the animal welfare committee</p> <p>13 at the UEP, did you ever attend other committee</p> <p>14 meetings of that organization?</p> <p>15 A. Certainly.</p> <p>16 Q. The -- did Fremont participate actively</p> <p>17 in the animal welfare committee?</p> <p>18 A. Steve was a member of that committee. I</p> <p>19 certainly attended it.</p> <p>20 Q. Do you know how he voted on the UEP</p> <p>21 certification?</p> <p>22 A. No. No -- no idea, sir.</p>	<p style="text-align: right;">157</p> <p>1 before. So if you could just answer it, I'll move</p> <p>2 on.</p> <p>3 A. No. I never heard that that was a goal.</p> <p>4 No, I did not.</p> <p>5 MR. MALKINSON: Okay. I'm going to just</p> <p>6 continue looking for the one -- I'm looking for one</p> <p>7 document. If you want, I'd just as soon let</p> <p>8 Merrick go ahead, and if I find it, I find it.</p> <p>9 MR. RAYLE: Five minutes?</p> <p>10 MR. GREENE: Yeah. Why don't we take a</p> <p>11 short break. Are you going to be ready to go?</p> <p>12 THE VIDEOGRAPHER: Off the record.</p> <p>13 (Whereupon, a recess was taken from 3:21</p> <p>14 p.m to 3:26 p.m.)</p> <p>15 THE VIDEOGRAPHER: On the record.</p> <p>16 EXAMINATION BY COUNSEL FOR THE INDIRECT PLAINTIFFS</p> <p>17 BY MR. RAYLE:</p> <p>18 Q. Good afternoon, sir. My name is Merrick</p> <p>19 Rayle, and I am one of the lawyers that represents</p> <p>20 the indirect plaintiffs. I'll do my best to be</p> <p>21 brief.</p> <p>22 When you spoke with Mr. Greene, did he</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

41 (Pages 158 to 161)

<p style="text-align: right;">158</p> <p>1 explain to you why he wanted to take your 2 deposition?</p> <p>3 A. To get a better -- yes.</p> <p>4 Q. And what was that reason?</p> <p>5 A. To get a better understanding of the 6 construction that had taken place in the industry 7 during the period that he was interested in looking 8 at it.</p> <p>9 Q. And I believe you testified this morning 10 that you have a property in Florida. Did I hear 11 that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Marco Island?</p> <p>14 A. Yes.</p> <p>15 Q. Is that where you currently reside?</p> <p>16 A. Yes.</p> <p>17 Q. And when were you last there?</p> <p>18 A. Last Wednesday.</p> <p>19 Q. And you flew from that location to 20 Des Moines Wednesday last?</p> <p>21 A. Yes. Actually, I flew from Des Moines 22 to that location and back Wednesday.</p>	<p style="text-align: right;">160</p> <p>1 that's true. Now, he sends an e-mail dated 2 October 31, 2006 to Dana P-e-r-s-s-o-n. Do you see 3 that?</p> <p>4 A. Persson, yes.</p> <p>5 Q. And who is Dana --</p> <p>6 A. The CEO of Golden Oval Eggs.</p> <p>7 Q. And throughout that e-mail, he 8 describes, Mr. Osborne -- let me draw your 9 attention to the second paragraph, "the major 10 reason for the interest in meeting." Do you see 11 all that?</p> <p>12 A. Yes.</p> <p>13 Q. Does that inaccurately characterize the 14 situation as of that date, as far as you know?</p> <p>15 MR. GREENE: Objection, vague.</p> <p>16 BY MR. RAYLE:</p> <p>17 Q. I'm looking on page 2 specifically --</p> <p>18 A. Sir, I can only speak to what I read. I 19 mean, everybody was there for a different reason, 20 I'm sure. Different reasons.</p> <p>21 Q. I'm looking at the -- on page 2, the 22 first full sentence. "The only one I regarded as</p>
<p style="text-align: right;">159</p> <p>1 Q. Did you receive any money to cover your 2 transportation costs?</p> <p>3 A. For?</p> <p>4 Q. From anybody for this deposition.</p> <p>5 A. \$43.86.</p> <p>6 Q. A pretty cheap flight. And that was 7 from Michael Foods?</p> <p>8 A. I don't know who it was from. It came 9 with the subpoena.</p> <p>10 Q. Okay. And that's the only remuneration 11 you received?</p> <p>12 A. Mm-hmm. Yes.</p> <p>13 Q. Would you look again at Exhibit 11, 14 please.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Let's go down to the bottom of page one. 17 Paul Osborne, is he with Golden Oval?</p> <p>18 A. Moark.</p> <p>19 Q. Moark?</p> <p>20 A. And then -- he may have moved to Golden 21 Oval when Golden Oval bought Moark. Go ahead. 22 Q. All right. I believe that is -- I think</p>	<p style="text-align: right;">161</p> <p>1 truly hostile to UEP and the ACC program is 2 Sparboe." Do you see that, sir?</p> <p>3 A. Yes.</p> <p>4 Q. Based on your experience with this 5 matter, is that a fair statement, that Sparboe was 6 truly hostile to the program?</p> <p>7 A. Sparboe is a customer of mine. They 8 have the rights to their own opinions.</p> <p>9 Q. I don't dispute that. I'm just trying 10 to get a sense from you as to what you thought 11 Mr. Sparboe's opinion was, whether this was an 12 accurate statement or not accurate statement.</p> <p>13 A. They were not a fan of the UEP program.</p> <p>14 Q. On the penultimate paragraph of that 15 page, it starts out "After much discussion, a 16 committee was formed to consider options for going 17 forward with Ken and to make recommendations back 18 to the group. There was not unanimous consensus 19 regarding this." Do you recall who was opposed to 20 that?</p> <p>21 A. There was not a unanimous consensus to 22 form a committee and move forward. That is a true</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

42 (Pages 162 to 165)

<p style="text-align: right;">162</p> <p>1 statement. It wasn't unanimous.</p> <p>2 Q. Do you recall who was opposed to it?</p> <p>3 A. No. There was -- it was not just one</p> <p>4 person. There were several people who weren't sure</p> <p>5 how to go forward. And it was decided that we</p> <p>6 needed more information, so a committee was formed</p> <p>7 to try and get more information.</p> <p>8 Q. And that committee included someone from</p> <p>9 Sparboe; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Mr. Krieder, yourself and Mr. Catherman;</p> <p>12 is that right?</p> <p>13 A. Yes.</p> <p>14 (Henning Exhibit 16 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. RAYLE:</p> <p>17 Q. Exhibit 16 for identification in the</p> <p>18 upper left-hand corner is titled "Egg Industry</p> <p>19 Center" and then there's a picture of you</p> <p>20 underneath that; is that correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. The biographical data that sits to the</p>	<p style="text-align: right;">164</p> <p>1 of that particular group?</p> <p>2 A. Oh, not off my head totally.</p> <p>3 Q. You were one such person?</p> <p>4 A. I was one person. Sparboe was one</p> <p>5 person. Dr. Dennis Casey, an ex-chairman of</p> <p>6 Hy-Line, was on there. One gentleman from</p> <p>7 Michael's Foods was on there from the egg products</p> <p>8 beside a doctor or somebody. I'm sorry. It will</p> <p>9 come to me after a bit.</p> <p>10 Pete Block from Hy-Line International.</p> <p>11 Two or three other producers. Dr. Wendy</p> <p>12 Wintersteen from Iowa State University.</p> <p>13 Dr. Hongwei Shin, who is now the director, and a</p> <p>14 number of other people were on the foundational</p> <p>15 committee to try and set up the rules on how to</p> <p>16 accomplish the goals for the Egg Industry Center.</p> <p>17 Q. Are you still active in that --</p> <p>18 A. I am.</p> <p>19 Q. -- activity?</p> <p>20 (Henning Exhibit 17 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. RAYLE:</p>
<p style="text-align: right;">163</p> <p>1 right of your picture, will you just read that and</p> <p>2 tell me whether it's accurate.</p> <p>3 A. "Mr. Henning is chairman of Henning</p> <p>4 Construction" --</p> <p>5 Q. You don't have to read it aloud. Just</p> <p>6 read through it and tell me whether it's accurate,</p> <p>7 as best you can tell.</p> <p>8 A. It is accurate.</p> <p>9 Q. And can you tell me what the Egg</p> <p>10 Industry Center is?</p> <p>11 A. The Egg Industry Center is a center that</p> <p>12 was formed in conjunction with Iowa State</p> <p>13 University and 13 other land grant institutions to</p> <p>14 research and provide guidance to matters of</p> <p>15 importance topically to the industry at any given</p> <p>16 time.</p> <p>17 Q. And who formed it?</p> <p>18 A. It was formed by Iowa State University</p> <p>19 in conjunction with these other universities, but</p> <p>20 the founding committee -- or formational committee,</p> <p>21 was a group of twelve of us.</p> <p>22 Q. All right. Can you tell us who was part</p>	<p style="text-align: right;">165</p> <p>1 Q. My first question -- well, let me for</p> <p>2 the record say this is -- at the top it's an e-mail</p> <p>3 to Mr. Fortin, F-o-r-t-i-n from Jerry Kil, K-i-l.</p> <p>4 And it's Moark 0029479 through -29481.</p> <p>5 My question, sir is, first off, do you</p> <p>6 know Mr. Jerry Kil, K-i-l?</p> <p>7 A. Yes.</p> <p>8 Q. And who is he?</p> <p>9 A. He is retired from Moark, but currently</p> <p>10 sells their over/unders. And Joe Fortin was what I</p> <p>11 would call the managing director of Moark at that</p> <p>12 point in time.</p> <p>13 Q. And below that is what purports to be a</p> <p>14 copy of an e-mail from Mr. Klippen to Mr. Gene</p> <p>15 Gregory dated October 17, 2006. Do you see that,</p> <p>16 sir?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Do you know who Mr. Gene Gregory</p> <p>19 was as of October of 2006?</p> <p>20 A. CEO of -- or president, whichever, of</p> <p>21 United Egg Producers.</p> <p>22 Q. And what was Mr. Ken Klippen's position</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

43 (Pages 166 to 169)

<p style="text-align: right;">166</p> <p>1 at that time?</p> <p>2 A. Agitator. Ken Klippen and Gene Gregory</p> <p>3 never got along on many subjects. And this</p> <p>4 certainly -- the Klippen committee was a real</p> <p>5 agitation between those two folks and those two</p> <p>6 organizations.</p> <p>7 Q. And the subject of Mr. Klippen's</p> <p>8 October 17 e-mail reads "misrepresented and</p> <p>9 misguided, does it not?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Now, it's true, is it not, that at one</p> <p>12 point in time, Mr. Klippen was employed by the UEP?</p> <p>13 A. I'm not positive of that. That sounds</p> <p>14 right.</p> <p>15 Q. In Mr. Klippen's e-mail, he speaks about</p> <p>16 going to a meeting in Iowa recently. Do you see</p> <p>17 that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you know anything about that meeting?</p> <p>20 A. No.</p> <p>21 Q. Okay. Is it fair, then, to say that you</p> <p>22 don't believe you attended this meeting?</p>	<p style="text-align: right;">168</p> <p>1 whole thing if you want. But I'm only interested</p> <p>2 in page 2. For the record, this is MOARK0006344</p> <p>3 through -6353. And at the bottom of page 2,</p> <p>4 there's a paragraph titled "Feeder Space Research."</p> <p>5 Do you see that, sir?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Will you read through that.</p> <p>8 A. Yes, sir.</p> <p>9 Q. You don't have to read it --</p> <p>10 A. Done.</p> <p>11 Q. Good. The very last sentence of that</p> <p>12 item reads, "The new deeper cage would, in fact,</p> <p>13 provide less feeder space per hen than existing</p> <p>14 equipment once the 67 inches were reached." Do you</p> <p>15 see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Is that a true statement?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know why that apparent</p> <p>20 miscalculation occurred?</p> <p>21 A. Well, if you have a 24-by-20 cage and</p> <p>22 you have ten birds in it, that's 48 square inches.</p>
<p style="text-align: right;">167</p> <p>1 A. I don't remember it.</p> <p>2 Q. Now, on the next page we have a copy of</p> <p>3 an e-mail from Mr. Gene Gregory, Tuesday,</p> <p>4 October 17, to Mr. Klippen, subject "Disappointed."</p> <p>5 And Mr. Gregory refers to a meeting of several</p> <p>6 producers that Mr. Klippen is holding in Chicago,</p> <p>7 do you see that, on October 30th?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you recall if you attended the</p> <p>10 October 30th meeting?</p> <p>11 A. Yes, I did.</p> <p>12 Q. And what was discussed at that meeting,</p> <p>13 to the best of your memory today, sir? I realize</p> <p>14 it was seven years ago.</p> <p>15 A. It would be outlined in the previous</p> <p>16 exhibit that was shown.</p> <p>17 Q. All right. Thank you.</p> <p>18 (Henning Exhibit 18 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. RAYLE:</p> <p>21 Q. Exhibit 18 is a United Voices document</p> <p>22 dated June 2nd 2004. And you're free to read the</p>	<p style="text-align: right;">169</p> <p>1 If you have a 24-by-23-and-one-third-inch-deep cage</p> <p>2 with eleven birds in it, you've had less front</p> <p>3 space for feeders, mathematically. Now, this is 67</p> <p>4 square inches. I offered 48 for discussion</p> <p>5 purposes.</p> <p>6 Q. Is that still true today with regard to</p> <p>7 the 67-square-inch cage, floor space?</p> <p>8 MR. GREENE: Objection, vague.</p> <p>9 BY MR. RAYLE:</p> <p>10 Q. Well, let me -- that's a fair objection.</p> <p>11 To your knowledge, has anything been</p> <p>12 done in the industry to rectify the problem</p> <p>13 outlined in the last sentence that we just -- that</p> <p>14 we're focused on here?</p> <p>15 A. The feeder space requirement was</p> <p>16 revisited.</p> <p>17 Q. And can you tell us to what -- with what</p> <p>18 result?</p> <p>19 A. I believe that the result was 24 inches</p> <p>20 in the front of the cage that size was acceptable.</p> <p>21 Q. Do you know when that was implemented?</p> <p>22 A. Not exactly, sir. But this -- the</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

44 (Pages 170 to 173)

<p style="text-align: right;">170</p> <p>1 scientific committee relooked at that, as I recall 2 the sequence of events. 3 Q. All right. So to summarize and repeat, 4 it's a true statement and the problem has been 5 rectified, as best as you know? 6 A. Yes, sir. 7 Q. Okay. 8 (Henning Exhibit 19 was marked for 9 identification.) 10 BY MR. RAYLE: 11 Q. Exhibit 19 is a copy of a document 12 titled "Henning News." Can you tell us what 13 Henning News is? 14 A. That would be the newsletter that my 15 daughter puts out to the industry and customers. 16 Q. And for how many years has this document 17 or a document like it been disseminated? 18 A. She is 34 years old, so subtract about 19 21 from that, and that would be my guess. 20 Q. Okay. And how frequently does it come 21 out? 22 A. Monthly.</p>	<p style="text-align: right;">172</p> <p>1 e-mail at the top to Mr. Lowell D. Ostrand. Do you 2 see that? 3 A. Yes. 4 Q. Who is Mr. Ostrand? 5 A. He is the assistant buyer. Works with 6 Terry Baker. 7 Q. With Michael Foods? 8 A. Correct. 9 (Henning Exhibit 21 was marked for 10 identification.) 11 BY MR. RAYLE: 12 Q. Exhibit 21 is a multipage document, 13 MFI0064621 through -64662. And at the very top of 14 the first page, it looks like it's an e-mail 15 e-mail -- transmittal e-mail from yourself to 16 Mr. Klippen, Mr. Catherman, Mr. Rettig, Mr. Adams 17 and Mr. Carlson. Do you see that, sir? 18 A. Yes. 19 Q. And the subject is "USDA comments on 20 verified VPC." Do you recall sending this e-mail, 21 sir? 22 A. Yes.</p>
<p style="text-align: right;">171</p> <p>1 Q. Put that aside. 2 (Henning Exhibit 20 was marked for 3 identification.) 4 BY MR. RAYLE: 5 Q. 20 is a series of e-mails with the 6 last -- on the first page starts out from Mr. Baker 7 to Mr. Bebee and it reads on down. You're 8 mentioned in the e-mail from Mr. Catherman dated 9 Thursday, April 12th 2007, are you not? 10 A. Yes. 11 Q. Do you recall receiving these e-mails? 12 A. Probably, yes. 13 Q. And on the second page, Mr. Klippen says 14 he's enclosing the VPC, LLC financial plan. Do you 15 see that? 16 A. Yes. 17 Q. Did you assist Mr. Klippen in any way in 18 formulating that plan? 19 A. I believe he and his brother did that. 20 Q. Is his brother a lawyer? 21 A. Yes. 22 Q. There's a reference in Mr. Catherman's</p>	<p style="text-align: right;">173</p> <p>1 Q. And then below that is an e-mail from 2 Mr. Klippen to, among others, yourself which speaks 3 for itself. In general, just looking through this, 4 was this a final draft of the purported verified 5 VPC program? 6 A. I believe that this was the USDA's 7 comments on our draft that was submitted. And this 8 was the comments back, and this was Ken's comments 9 back to them. So this was close to what would have 10 been the final program. 11 Q. To what extent, if at all, did you have 12 input into any part of the Verified VPC program? 13 A. I would have been responsible for 14 calling the people together to keep this moving 15 forward. I'm more of a 30,000-foot whip guy than I 16 am a nuts-and-bolts guy. 17 So the various people that were involved 18 in the whole thing went back and saw drafts along 19 the way, and we kept putting drafts out to people 20 to get their comments to incorporate what we could, 21 and then get USDA's thoughts and processes back on 22 that to produce a program.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

45 (Pages 174 to 177)

<p style="text-align: right;">174</p> <p>1 My interest in this again, quite 2 frankly, was to offer an alternative for our 3 customers and producers and, quite frankly, the 4 reason I continued to participate in the financing 5 of this process to some extent was to have the use 6 of this in some of our other businesses. 7 Q. Did Mr. -- was it -- Mr. Gene Gregory 8 was at the top of the UEP in 2007, was he not? 9 A. Yes. 10 Q. He was head -- I don't know what they 11 call him. Chairman or president or something. Was 12 he aware of your interaction with Mr. Klippen? 13 A. Yes. 14 MR. GREENE: Objection, calls for 15 speculation. 16 BY MR. RAYLE: 17 Q. To your knowledge, was he aware of your 18 interaction with Mr. Klippen? 19 A. Yes. 20 Q. Did he ever have any conversations with 21 you about your interaction with Mr. Klippen and the 22 VPC program?</p>	<p style="text-align: right;">176</p> <p>1 A. No. 2 Q. -- about your business or customers or 3 anything? 4 A. No. 5 Q. So as far as you can recall today, when 6 did Mr. Klippen's verified VPC program, when was 7 that put into final form? 8 A. I can't recall memory-wise. 9 Q. Did it reach an end at some point? 10 A. It did. 11 Q. And when it was in its final form, was 12 that then redistributed to various people? 13 A. Yes, it was. 14 Q. And I believe you testified in response 15 to my colleague here questioning a few minutes ago 16 that you were financially -- one of the financial 17 contributors to what he referred to as the Klippen 18 group. Do you recall that? 19 A. Yes. 20 Q. Do you recall how much of your company's 21 money you contributed to Mr. Klippen? 22 A. Actually, I need to again remind you</p>
<p style="text-align: right;">175</p> <p>1 A. Only constructive in nature and do you 2 think this was the right thing to do, and do you 3 think this was, da, da, da, da, da. And my answer 4 was the same as I would give to you right now, is I 5 have an interest in this program for other things. 6 I also believe that, you know, your constituency 7 will ultimately make their decisions as to what 8 we're going to do. And as a member of this 9 industry, then we'll have to decide individually, 10 each producer, what they're going to do. 11 Q. Did Mr. Gregory express any displeasure 12 with you over your interactions with this program? 13 A. I didn't have many lunches and dinners 14 with him. It was professional. 15 Q. So whatever dissatisfaction, if any, he 16 had, he acted professionally at all times? He 17 didn't try to pressure you to back down or anything 18 like that? Mr. Gregory. 19 A. Well, he certainly wanted to express his 20 views. But I wasn't barred from being a UEP member 21 or anything else along those lines. 22 Q. He didn't make any threats to you --</p>	<p style="text-align: right;">177</p> <p>1 that this was done through the Henning family. 2 Q. Okay. Fair. 3 A. And, no, I do not know the entire amount 4 of money. It wouldn't surprise me if it was 30- or 5 40,000 bucks. 6 Q. Okay. 7 MR. RAYLE: Mark that as the exhibit 8 next in order, please. 9 (Henning Exhibit 22 was marked for 10 identification.) 11 BY MR. RAYLE: 12 Q. Exhibit 22 are the minutes -- the title 13 is UEP Marketing Committee Tuesday, January 27, 14 2009, MFI0009964 through MFI0010002. On the date, 15 as I said, January 27th, 2009. Is this a meeting 16 that you attended, sir? 17 A. No, sir. 18 Q. And on the third page in are minutes of 19 a meeting held -- a UEP Marketing Committee meeting 20 held in Greensboro, Georgia on October 15, 2008. 21 And there's an entry on that page that suggests 22 that you were present at that particular marketing</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

46 (Pages 178 to 181)

<p style="text-align: right;">178</p> <p>1 committee meeting. Do you see that, "The meeting 2 attendees included," and then go down to the second 3 line, Jeff Henning.</p> <p>4 A. Okay. I see what it says, but I do not 5 recall being at the meeting.</p> <p>6 Q. Do you have any reason to believe that 7 your name would be there if you weren't?</p> <p>8 MR. GREENE: Objection, argumentative. 9 MR. RAYLE: I'm not trying to be.</p> <p>10 A. No, I don't remember. So -- 11 BY MR. RAYLE:</p> <p>12 Q. Now, as of October 15, 2008, were you a 13 member of the UEP Marketing Committee, you or your 14 company?</p> <p>15 A. I was not, no.</p> <p>16 Q. Was your company?</p> <p>17 A. No. Well, which company? No. We were 18 not.</p> <p>19 Q. In other words, you could attend that 20 meeting without being a member?</p> <p>21 A. That's why you're an additional 22 attendee, sir.</p>	<p style="text-align: right;">180</p> <p>1 Do you recall whether you ever had any 2 conversations with Mr. Bell about any one or more 3 or all of those three subjects, feeder space, cage 4 configuration, or --</p> <p>5 A. No, I had not.</p> <p>6 Q. Now, I gather that your company is not 7 in the business of designing cages.</p> <p>8 A. No. We were not. We work with the cage 9 companies to design facilities with them using 10 their equipment. So the cage boys would have had 11 more to do with all this than we would have.</p> <p>12 Q. With regard to the various construction 13 activities you undertook in connection with Michael 14 Foods, was there one particular cage manufacturer, 15 or as you put it, cage guy, that handled that on 16 your projects?</p> <p>17 A. I was the primary project manager for 18 the majority of the early part of the construction 19 that happened there, and there were two or three 20 different cage manufacturers involved.</p> <p>21 Q. Can you tell us who they were?</p> <p>22 A. M-u-e-l-l-e-r, Mueller, which was a</p>
<p style="text-align: right;">179</p> <p>1 Q. Yeah. Put that aside. 2 (Henning Exhibit 23 was marked for 3 identification.)</p> <p>4 BY MR. RAYLE:</p> <p>5 Q. Exhibit 23 is entitled "Unresolved 6 Animal Welfare Issues" at BELL-D-00028597 through 7 -28599. Do you know who Mr. Don Bell is, sir?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Who is he?</p> <p>10 A. A retired California professor who was a 11 longtime adviser to the industry on monthly 12 statistics, pricing, housing and price projections, 13 among other things.</p> <p>14 Q. In the course of your dealings with the 15 UEP, did you have occasion to have interactions 16 with Mr. Bell?</p> <p>17 A. Yes. And he also was a member of the 18 Egg Industry Center board.</p> <p>19 Q. Now, this document does not bear a date, 20 but it does list as unresolved animal welfare 21 issues feeder space, cage configuration, usable 22 floor space and cage height and so on.</p>	<p style="text-align: right;">181</p> <p>1 German company.</p> <p>2 Q. Okay.</p> <p>3 A. Facco, F-a-c-c-o, which is an Italian 4 company. Big Dutchman, which is an American 5 company -- well, actually, it's a German company, 6 manufactured in America. And that would have been 7 the preponderance of them.</p> <p>8 Q. Are those entities, as far as you know, 9 still in business today?</p> <p>10 A. I don't believe Mueller is.</p> <p>11 Q. Now, are you acquainted in a general way 12 with the September 2000 recommendations of the UEP 13 scientific committee?</p> <p>14 MR. GREENE: Are you asking him about 15 Exhibit 23? Because he's looking --</p> <p>16 MR. RAYLE: Yes.</p> <p>17 A. In general, yes, sir.</p> <p>18 BY MR. RAYLE:</p> <p>19 Q. Did you from time to time have 20 interactions with the members of the UEP scientific 21 advisory committee?</p> <p>22 A. Occasionally.</p>

HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

47 (Pages 182 to 185)

<p style="text-align: right;">182</p> <p>1 Q. Did you have any suggestions from time 2 to time that you would give to the committee with 3 respect to, for example, cage configuration?</p> <p>4 A. On occasion.</p> <p>5 Q. Did you have any consultations -- strike 6 that.</p> <p>7 Did you have any interactions with the 8 members of the scientific advisory committee on the 9 issue of feeder space?</p> <p>10 A. I believe that is one where I might have 11 had an input to them.</p> <p>12 Q. Can you tell us what you -- as best you 13 can tell today, what your input was?</p> <p>14 A. Well, the other countries and scientific 15 committees had not necessarily stipulated a 16 four-inch feeder space and that from an economics 17 standpoint for the producers, it would be much 18 better off if they could go to the slightly deeper 19 cage and get to the eight birds times the 67 square 20 inches, because you can't have a half a bird or a 21 third of a bird in a cage.</p> <p>22 And so something had to give. Either it</p>	<p style="text-align: right;">184</p> <p>1 Q. I'm trying to figure out a way to do 2 this very quickly, because this is my last line of 3 questioning.</p> <p>4 MR. RAYLE: Make this the exhibit next 5 in order.</p> <p>6 (Henning Exhibit 24 was marked for 7 identification.)</p> <p>8 BY MR. RAYLE:</p> <p>9 Q. Exhibit 24 is a series of e-mails 10 involving -- somewhat involving, concerning a 11 Chicago meeting. The first one is dated March 26th 12 2008 from Mr. Catherman to Mr. Baker and others.</p> <p>13 Looking through that, do you recall 14 whether you attended the Chicago meeting that's 15 outlined in this document?</p> <p>16 A. Quite frankly, without the calendar in 17 front of me, I cannot. I apologize.</p> <p>18 Q. Okay. And at the bottom of the second 19 page, there's an e-mail there from Mr. Klippen to 20 yourself and others dated March 24, 2008, and he 21 outlines five bullet points on the next to the last 22 page there, three of which concern the VPC. Do you</p>
<p style="text-align: right;">183</p> <p>1 was going to be seven birds or it was going to be 2 four inches. Which was it? They needed to figure 3 it out and see if they really had scientific proof 4 that it needed to be four inches.</p> <p>5 Q. And did you have a judgment one way or 6 the other as to whether the scientific proof 7 supported four inches?</p> <p>8 A. I would only tell you that we had 9 customers in Europe that had been very successful 10 in feed conversion without a lot of animal pecking 11 or, you know, aggressiveness issues using less than 12 four inches. And that was what I indicated to 13 them.</p> <p>14 Q. If you were asked this already and I 15 didn't hear your answer, I beg your indulgence. 16 But did you have occasion to attend UEP Scientific 17 Advisory Committee meetings at any time?</p> <p>18 A. Yes.</p> <p>19 Q. Could you tell us approximately how many 20 such meetings you believe you might have -- was it 21 more or less than ten?</p> <p>22 A. It was less than ten.</p>	<p style="text-align: right;">185</p> <p>1 see that, sir?</p> <p>2 A. Yes.</p> <p>3 Q. And there's a reference to the Midwest 4 Poultry Federation convention in St. Paul on the 5 first line of that e-mail. Do you recall if you 6 attended that event?</p> <p>7 A. 2008. I probably did not. I spend my 8 winters in Florida normally. I don't -- the last 9 six, seven, eight years, I don't believe I've been 10 there.</p> <p>11 Q. Do you recall when Mr. Klippen was able 12 to circulate or disseminate the very first draft of 13 the VPC program?</p> <p>14 A. I'm sorry. Not without those docs, I do 15 not. I'd just refer back to the Exhibit 21 that 16 you gave. That's the best time frame I could give 17 you, quite frankly.</p> <p>18 Q. What I'm trying to figure out here is 19 the VPC program had a beginning date and then it 20 had a date where it got no legs and didn't go 21 anywhere. And I'm trying to get an idea of what 22 that span of time was, whether it was a year, a</p>

HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

48 (Pages 186 to 189)

<p style="text-align: right;">186</p> <p>1 year and a half, more or less.</p> <p>2 A. I would guess 14, 15 months.</p> <p>3 Q. Okay.</p> <p>4 (Henning Exhibit 25 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. RAYLE:</p> <p>7 Q. I've put before you the exhibit next in</p> <p>8 order, which is entitled UEP Annual Membership</p> <p>9 Meeting, Reynolds Plantation, Georgia. And if</p> <p>10 you -- MFI00021325 through -333.</p> <p>11 And on page 328, your name is listed</p> <p>12 under staff, State executives and associate</p> <p>13 members. Can you tell me whether you were in</p> <p>14 attendance at the UEP annual membership meeting</p> <p>15 October 18th 2007 in Chicago?</p> <p>16 A. I thought you were going to ask me about</p> <p>17 the Reynolds Plantation. I know I was there</p> <p>18 because I have the shirt in my closet. I don't</p> <p>19 remember the Chicago meeting. If it says I was</p> <p>20 there, I probably was there. I have no reason to</p> <p>21 dispute that.</p> <p>22 Q. On page MFI00021333, there's some</p>	<p style="text-align: right;">188</p> <p>1 New Orleans?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall if you attended a UEP</p> <p>4 annual membership meeting October 23, 2003 in</p> <p>5 Albuquerque?</p> <p>6 A. Yes.</p> <p>7 Q. Yes, you recall and, yes, you did?</p> <p>8 A. Yes. I would probably stipulate to you</p> <p>9 that I recall being at most UEP annual meetings, if</p> <p>10 that would make this easier for you.</p> <p>11 Q. All right. That's good. So you are a</p> <p>12 regular attendee at the annual meeting?</p> <p>13 A. I am.</p> <p>14 Q. And that is because you had many</p> <p>15 customers who were also there?</p> <p>16 A. That is correct. It's the easiest sales</p> <p>17 call in the world.</p> <p>18 Q. Okay. And that was part of your</p> <p>19 business, was to do business, and to do business,</p> <p>20 you had to interact with those folks in your</p> <p>21 industry when you could, correct?</p> <p>22 A. That is correct.</p>
<p style="text-align: right;">187</p> <p>1 handwritten notes there. Do you recognize in whose</p> <p>2 hand those notes were made?</p> <p>3 A. No, sir.</p> <p>4 Q. Has your company done business with</p> <p>5 Mr. Bob Krouse's company?</p> <p>6 A. We interviewed to do business with them</p> <p>7 years ago.</p> <p>8 Q. Did you do any business with them?</p> <p>9 A. No.</p> <p>10 Q. Do you recall whether in 2006 you</p> <p>11 attended a UEP annual membership meeting in</p> <p>12 San Antonio, Texas?</p> <p>13 A. I think I have that shirt, too. Yes.</p> <p>14 Q. Do you recall whether you attended an</p> <p>15 UEP annual membership meeting held October 6th 2005</p> <p>16 in Seattle, Washington?</p> <p>17 A. I did not. I was in Seattle. That was</p> <p>18 the International Egg Commission. I do not believe</p> <p>19 I was there. I thought that was an International</p> <p>20 Egg Commission meeting.</p> <p>21 Q. Do you recall whether you attended a UEP</p> <p>22 annual membership meeting October 21, 2004 in</p>	<p style="text-align: right;">189</p> <p>1 MR. RAYLE: I have no further questions</p> <p>2 at this time. Thank you very much, sir.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 MR. GREENE: Mr. Malkinson, did you find</p> <p>5 your exhibit?</p> <p>6 MR. MALKINSON: I did.</p> <p>7 FURTHER EXAMINATION BY COUNSEL FOR THE</p> <p>8 DIRECT PURCHASER PLAINTIFFS</p> <p>9 BY MR. MALKINSON:</p> <p>10 Q. Just so I don't have to -- would it be</p> <p>11 fair, sir, to you if a UEP committee meeting</p> <p>12 minutes, set of minutes, lists you in attendance,</p> <p>13 do you have any reason to dispute whether you were</p> <p>14 actually there?</p> <p>15 A. I would have been in the committee</p> <p>16 meeting if it said I was. I may have left the</p> <p>17 committee meeting. But I certainly wouldn't argue</p> <p>18 that I was probably there for some period of time.</p> <p>19 Q. Are you familiar with an audit process</p> <p>20 that exists for determining compliance with UEP</p> <p>21 certification?</p> <p>22 A. Yes.</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffrey L.

August 26, 2013

49 (Pages 190 to 193)

<p style="text-align: right;">190</p> <p>1 Q. Please tell me if you agree with the</p> <p>2 following remark about that audit process. This is</p> <p>3 as of January of 2003. "A producer can fail the</p> <p>4 significant portions of the beak trimming, handling</p> <p>5 transportation, slaughter and molting portions of</p> <p>6 the audit and still receive a passing score. Thus,</p> <p>7 the audit program could be construed to be</p> <p>8 unconcerned whether a producer is humanely handling</p> <p>9 molting and beak trimming layers."</p> <p>10 "Layers layers" is the way it's printed.</p> <p>11 "This is not true of density. Here</p> <p>12 there is a total knockout factor on space. This,</p> <p>13 in our opinion, materially impacts those producers</p> <p>14 unable to deliver the UEP space requirement on all</p> <p>15 flocks."</p> <p>16 Do you agree with that criticism?</p> <p>17 MR. GREENE: Object to the form of the</p> <p>18 question.</p> <p>19 A. I really have no foundation to agree or</p> <p>20 disagree with it. I mean, if somebody said that,</p> <p>21 that was their opinion.</p> <p>22 BY MR. MALKINSON:</p>	<p style="text-align: right;">192</p> <p>1 memorandum.</p> <p>2 A. I am sure that I did not.</p> <p>3 Q. And when you say that, why are you so</p> <p>4 sure?</p> <p>5 A. Because it was our intention and policy</p> <p>6 to not try and get out in the front of this</p> <p>7 process. It wasn't -- we really didn't have a dog</p> <p>8 in the hunt.</p> <p>9 Q. You previously told us that you -- if</p> <p>10 you attended committee meetings, you and other</p> <p>11 guests who were present would typically participate</p> <p>12 in discussions that were going on. Was that true</p> <p>13 at board meetings as well when you would attend</p> <p>14 those?</p> <p>15 A. Board functions were normally board</p> <p>16 discussion, and you were, as a member, listening</p> <p>17 and watching what was going on.</p> <p>18 Q. Did they ever entertain opinions or</p> <p>19 thoughts from people who were observing?</p> <p>20 A. Not that I recall.</p> <p>21 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>22 MICHAEL FOODS</p>
<p style="text-align: right;">191</p> <p>1 Q. Do you recall a memorandum being</p> <p>2 presented to the UEP about its animal husbandry</p> <p>3 guidelines, seeking some changes in the guidelines</p> <p>4 by a bunch of undersigned individuals and</p> <p>5 companies?</p> <p>6 A. No, I don't. But it doesn't surprise</p> <p>7 me. I mean, they've tweaked the program since its</p> <p>8 inception.</p> <p>9 MR. MALKINSON: I don't have copies of</p> <p>10 it, but it's the last thing I've got here. This</p> <p>11 will be Exhibit 26.</p> <p>12 (Henning Exhibit 26 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. MALKINSON:</p> <p>15 Q. Sir, showing you what's been marked as</p> <p>16 Exhibit -- Henning Exhibit Number 26. This is a</p> <p>17 three-page document that goes from MF10052348</p> <p>18 through -52350. At the very top, it's entitled</p> <p>19 "Memorandum" and it's dated January 11th, 2003. If</p> <p>20 you could just take a look at it, sir. The main</p> <p>21 thing I want to ask you is whether or not you were</p> <p>22 one of the people that signed off on this</p>	<p style="text-align: right;">193</p> <p>1 BY MR. GREENE:</p> <p>2 Q. I have one follow-up question, Mr.</p> <p>3 Henning, about Exhibit 14. Could you put Exhibit</p> <p>4 14 in front of yourself? It's some minutes. They</p> <p>5 look like this. October 12 and 13, 2000.</p> <p>6 A. Yes, sir.</p> <p>7 Q. Mr. Malkinson asked you about these</p> <p>8 minutes earlier. You're indicated here under a</p> <p>9 section that's entitled "UEA Members." Do you see</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. And what's your understanding of what</p> <p>13 UEA means?</p> <p>14 A. That's United Egg Allied. So we're</p> <p>15 allied members. We're vendors. We're chemical</p> <p>16 salesmen, cage salesmen, builders, et cetera.</p> <p>17 We're not voting UEP members.</p> <p>18 Q. So when you referred to yourself at</p> <p>19 various times today as an allied member, were you</p> <p>20 meaning to indicate that you were a UEA member?</p> <p>21 MR. MALKINSON: Objection, form.</p> <p>22 BY MR. GREENE:</p>

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HIGHLY CONFIDENTIAL

Henning, Jeffry L.

August 26, 2013

50 (Pages 194 to 197)

<p style="text-align: right;">194</p> <p>1 Q. Withdrawn.</p> <p>2 Do you use -- in your various references</p> <p>3 to allied member, do you use "allied member"</p> <p>4 interchangeably with "UEA member"?</p> <p>5 A. Yes.</p> <p>6 MR. GREENE: No further questions.</p> <p>7 FURTHER EXAMINATION BY COUNSEL FOR THE DIRECT</p> <p>8 PURCHASER PLAINTIFFS</p> <p>9 BY MR. MALKINSON</p> <p>10 Q. Just -- the UEA stands for?</p> <p>11 A. You're asking me a question I don't know</p> <p>12 except for the "allied" portion.</p> <p>13 Q. United Allied Associates or Association?</p> <p>14 --</p> <p>15 A. I think it's "Allied."</p> <p>16 Q. Do you know the address of that</p> <p>17 organization?</p> <p>18 A. No, I don't.</p> <p>19 Q. Do you know whether it works out of the</p> <p>20 same address as the UEP?</p> <p>21 A. Well, I know that you have ex-officio</p> <p>22 members from the United Egg Producers staff. But</p>	<p style="text-align: right;">196</p> <p>1 was held at the UEP membership meetings.</p> <p>2 Q. They were held at the same time?</p> <p>3 A. Yes. The same location.</p> <p>4 Q. Were the executives the same for both</p> <p>5 groups?</p> <p>6 A. No.</p> <p>7 Q. The officers are different?</p> <p>8 A. Right.</p> <p>9 Q. Do they each have a board?</p> <p>10 A. Yes.</p> <p>11 Q. And are the boards -- is there any</p> <p>12 overlap on the board, to your knowledge?</p> <p>13 A. No. I don't believe there's any allied</p> <p>14 members that are on the UEP board.</p> <p>15 THE VIDEOGRAPHER: Off the record.</p> <p>16 (Reading and signing reserved).</p> <p>17 (Whereupon, at 4:21 p.m. the videotaped</p> <p>18 deposition was adjourned.)</p> <p>19 * * * * *</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">195</p> <p>1 the Allied has its own officers and operates</p> <p>2 independently of UEP relative to the administrative</p> <p>3 functions of it.</p> <p>4 Q. I understand what you're saying. But</p> <p>5 you're saying that the staff at the UEP facilitates</p> <p>6 the functions of the UEA, but that the members are</p> <p>7 not members of the -- the members of the UEA are</p> <p>8 not members of --</p> <p>9 A. The primary function of the UEA is to</p> <p>10 raise money and help support United Egg Producers,</p> <p>11 who are all our customers --</p> <p>12 Q. Okay.</p> <p>13 A. -- in a nutshell.</p> <p>14 Q. The dues you paid to the UEA, do you</p> <p>15 know what they were?</p> <p>16 A. It varies. I can't be specific on that.</p> <p>17 Q. Did you go to meetings of the UEA?</p> <p>18 A. Yes. I might even have been president</p> <p>19 at one point in time.</p> <p>20 Q. Were they held at different times and</p> <p>21 locations from the UEP meetings?</p> <p>22 A. Primarily the major membership meeting</p>	<p style="text-align: right;">197</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, _____, do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true, correct</p> <p>6 and complete transcription of the testimony given by</p> <p>7 me, and any corrections appear on the attached Errata</p> <p>8 Sheet signed by me.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 (DATE) (SIGNATURE)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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Henning, Jeffry L.

August 26, 2013

51 (Page 198)

<p style="text-align: right;">198</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF IOWA) 3 ss. 4 COUNTY OF POLK) 5 I hereby certify that I reported the 6 deposition of JEFFRY LYNN HENNING on August 26, 7 2013, in Des Moines, Iowa; 8 That the testimony was transcribed by me 9 and that this transcript is a true record of the 10 testimony of the witness; 11 That the cost of the original has been 12 charged to the party who noticed the deposition, 13 and that all parties who ordered copies have been 14 charged at the same rate for such copies; 15 That I am not a relative or employee or 16 attorney or counsel of any of the parties, or a 17 relative or employee of such attorney or counsel; 18 That I am not financially interested in 19 the action and have no contract with the parties, 20 attorneys, or persons with an interest in the 21 action that affects or has a substantial tendency 22 to affect my impartiality.</p> <p> WITNESS MY HAND AND SEAL THIS 29th day of August, 2013.</p> <p>_____ Jonathan Wonnell Registered Professional Reporter (NCRA #835577)</p>	

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